TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. [redacted]16

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON,
PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

FILED JANUARY 18, 1908.

(20,053.)

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SUPREME COURT OF THE UNITED STATES

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vs.

THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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a New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE ET ALS., Plaintiffs in Error.

On Indictment for Illegal Dredging of Oysters.

On Writ of Error.

State of the Case.

J. Hampton Fithian, Walter H. Bacon, for the State.
James Boyd Potter, Jonathan W. Acton, for the Plaintiffs in Error.

b New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE ET ALS., Plaintiffs in Error.

Additional State of the Case.

STATE
v.
LEE ET AL.

(Supreme Court of New Jersey. Feb. 23, 1904.)

Oysters—Unlawful Dredging—Evidence—Instructions.

1. On trial of an indictment for the unlawful dredging of oysters under section 22 of the act approved March 22, 1901 (P. L. 1901, p. 317), it is not necessary for the State to prove that the oyster bed in question had been marked, buoyed, or staked by or under the supervision of the state oyster commission.
2. When a defendant is on trial for doing certain physical acts with a certain purpose, and the acts charged point indubitably to that purpose, it is not reversible error for the trial judge, in charging the jury, to refer to proof of the acts as sufficient
c proof of guilt, without expressly referring to the purpose, there being no request or suggestion on behalf of the defendant that the purpose should be more particularly mentioned.

(Syllabus by the Court.)

Error to Court of Quarter Sessions, Cumberland County.

Uriah S. Lee and others were convicted of illegally dredging oysters, and bring error. Affirmed.

Argued November term, 1903, before Gummere, C. J., and Hendrickson, Swayze, and Dixon, JJ.

James Buchanan for plaintiffs in error. *I.* Hampton Fithian and Walter H. Bacon, for the State.

DIXON, *J.*:

The defendants were indicted under the twenty-second section of an act approved March 22, 1901 (P. L., p. 317), for casting their oyster dredges upon an oyster bed, "duly marked, buoyed and staked up" within the waters of Delaware Bay and Maurice River Cove below the "Southwest Line," belonging to and in possession of Edward Allen under a lease from the state oyster commission, without the permission of said lessee. On trial in the Cumberland sessions they were convicted on the first count of the indictment, and found not guilty on the second count, which charged larceny of the oysters. The acquittal under the second count dispenses with further remark as to the charge of larceny. We are now concerned only with the first count.

The defendants, in order to reverse the conviction, urge some objections to the constitutionality of the statute; but further consideration of them is precluded by the decision of this court in State *v.* Corson, 67 N. J. Law, 178, 50 Atl. 780.

The defendants insist that the trial court should have directed an acquittal because the State did not prove that the oyster bed in question had been "duly marked, buoyed and staked up" by or under the supervision of the state oyster commission. We think such proof was not necessary. That commission must, according to the eighth section of the act (P. L. 1901, p. 311), measure the leased lands, ascertain and locate their metes and bounds by ranges, mountains, or other means, so that their limits may be accurately fixed and easily located, and must make maps thereof; but any competent person may place the marks, buoys, or stakes which are to render the leased bed distinguishable by inspection as private grounds.

The defendants also object that there was no proof of correspondence between the bed as staked and the bed leased or mapped. This objection is without support in fact. The testimony of Allen, Hilton, and Boyle furnishes the required proof, and, indeed, such correspondence seems not to have been questioned at the trial.

Another objection is that the jury were not expressly instructed that proof of a "purpose to catch oysters" was necessary to warrant a conviction. Such a purpose is essential to guilt; but doubtless the trial judge assumed, as every person concerned in the trial appears to have done, that no other purpose could have actuated the defendants, if, as claimed by the State, they threw oyster dredgers from an oyster boat upon an oyster bed, and hauled them in again. If a more specific charge on that point was desired, it should have been requested.

We find no substantial error in either the admission or the exclusion of evidence, or in the charge to the jury. The court's comments on testimony were plainly within the range of reasonable discretion.

As no error capable of prejudicing the defendants in maintaining their defence upon the merits has been pointed out, the judgment below must be affirmed.

Lease for Oyster Grounds.

527.

State of New Jersey to Edward Allen.

To all to Whom These Presents Shall Come or May Concern, Greeting:

e Whereas, Pursuant to an act of the legislature of the State of New Jersey, approved March 24, 1899, entitled "An Act for the better regulation and control of the taking, planting and cultivating of oysters on land lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey," Edward Allen, hereinafter designated as lessee, has made application, in writing, to the State Oyster Commission appointed under said act, for a lease for a certain oyster ground situate under the tidal waters of the Delaware Bay and Maurice River Cove, south of the line running direct from the mouth of Straight Creek to Cross Ledge Light House, and commonly known as the "Southwest Line," in which said application said oyster ground is described as follows: Contains four acres, folio 292, now contains six acres and is designated on map of Maurice River Cove as No. 137, Section B.

Now, Therefore, The State of New Jersey, by the said Commission, in consideration of the premises, the terms and conditions hereinafter contained and the yearly rent of two 50-100 dollars, payable as hereinafter provided, does hereby let and rent unto the said lessee, his executors, administrators and assigns; subject to the terms, conditions and limitations herein contained, the said oyster ground by the description aforesaid, for the term of one year from the twentieth day of June, 1901.

Provided, however and this lease is made subject to the following express terms, conditions and limitations:

First. That said ground shall be exclusively used and enjoyed by the said lessee for the taking, planting, and cultivating of oysters.

Second. That the annual rental above specified shall be paid, for the first year, at the time this lease is granted and before the same shall take effect, and for each succeeding year the same shall be paid within thirty days after the beginning of said year.

Third. That in the use and enjoyment of said oyster ground for the purposes hereinbefore specified, the said lessee shall comply with the requirements of the act hereinbefore recited, and the provisions of any other act of the legislature of this State regu-

f lating the taking, planting or cultivating of oysters in the Delaware Bay and Maurice River Cove now in force or hereafter enacted or passed.

Fourth. That the said lessee shall not assign this lease or sub-let the said ground, or any part thereof, without the consent in writing of the said Commission endorsed hereon.

And if the lessee aforesaid shall fail to comply with, keep and perform the terms, conditions and limitations aforesaid, or if it shall

appear that the said lessee was not, at the time of granting this lease, and had not been for twelve months next preceding a citizen and actual resident of this State, this lease shall be void, and all right, title and interest in and to the said ground thereunder shall become forfeited, and the said ground revert to the State of New Jersey.

And the said lessee, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said State of New Jersey, that he will well and truly pay, or cause to be paid, the yearly rental herein reserved at the time and in the manner hereinbefore mentioned and appointed for the payment thereof, and will comply with, keep and perform all the other terms, conditions and limitations herein specified, according to the true intent and meaning of these presents.

In Witness Whereof, Edward L. Riley, Edmund Stites Jr., and Jeremiah N. Ogden, the Commissioners comprising the said State Oyster Commission, have hereunto respectively set their hands and affixed the seal of the said State Oyster Commission, and the lessee aforesaid has also hereunto set his hand and seal this 11th day of October, 1901.

E. L. RILEY.
E. STITES, JR. [L. S.]
J. N. OGDEN.
EDWARD ALLEN. [L. S.]

Attest:
THOS. F. AUSTIN,
Oyster Sup't and Sec't'y.

The term of this lease is extended, by agreement between the parties thereto, for the term of one year from the expiration
g thereof, subject, in all respects, to the covenants, terms, conditions and limitations within contained except

A. T. BACON, *Sup't.*

Dated June 20, 1902.

The term of this lease is extended by agreement between the parties thereto, for the term of one year from the expiration thereof, subject, in all respects, to the covenants, terms, conditions and limitations within contained except

A. T. BACON, *Sup't.*

Dated June 30, 1903.

Received in the office of the State Oyster Commission at Maurice River, N. J., October 11, 1901, and recorded in Book of Leases No. 2, page 527.

Lease for Oyster Grounds.

State of New Jersey to U. S. Lee.

To all to Whom These Presents Shall Come or May Concern, Greeting:

Whereas, Pursuant to an act of the legislature of the State of New Jersey, approved March 24, 1899, entitled "An Act for the better regulation and control of the taking, planting and cultivating of oysters on land lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey, U. S. Lee, hereinafter designated as lessee, has made application, in writing, to the State Oyster Commission appointed under said act, for a lease for a certain oyster ground situate under the tidal waters of the Delaware Bay and Maurice River Cove, south of the line running direct from the mouth of Straight Creek to Cross Ledge Light House, and commonly known as the "Southwest Line," in which said application said oyster ground is described as follows: Containing fifty-five acres and are designated on map of Maurice River Cove as

No. 199, Section A, containing sixteen acres.
No. 119, Section A, containing thirteen acres.
No. 184, Section A, containing seven acres.
No. 135, Section A, containing eight acres.
No. 28, Section B, containing eleven acres.
No. 384, Section C, transferred to Thos. A. Rogers, two-thirds, and S. H. Whilden, one-third. Transfer made February 22, 1902.

Now, Therefore, The State of New Jersey, by the said Commission in consideration of the premises, the terms and conditions hereinafter contained and the yearly rent of $13.75-100 dollars, payable as hereinafter provided, does hereby let and rent unto the said lessee, his executors, administrators and assigns; subject to the terms, conditions and limitations herein contained, the said oyster ground by the description aforesaid, for the term of one year from the twentieth day of June, 1901.

Provided, however, and this lease is made subject to the following express terms, conditions and limitations:

First. That said ground shall be exclusively used and enjoyed by the said lessee for the taking, planting and cultivating of oysters.

Second. That the annual rental above specified shall be paid, for the first year, at the time this lease is granted and before the same shall take effect, and for each succeeding year the same shall be paid within thirty days after the beginning of said year.

Third. That in the use and enjoyment of said oyster ground for the purposes hereinbefore specified, the said lessee shall comply with the requirements of the act hereinbefore recited, and the provisions of any other act of the legislature of this State regulating the taking, planting or cultivating of oysters in the Delaware Bay and Maurice River Cove now in force or hereafter enacted or passed.

Fourth. That the said lessee shall not assign this lease or *i* sub-let the said ground, or any part thereof, without the consent in writing of the said Commission endorsed hereon.

And if the lessee aforesaid shall fail to comply with, keep and perform the terms, conditions and limitations aforesaid, or if it shall appear that the said lessee was not, at the time of granting this lease, and had not been for twelve months next preceding a citizen and actual resident of this State, this lease shall be void, and all right, title and interest in and to the said ground thereunder shall become forfeited, and the said ground revert to the State of New Jersey.

And the said lessee, for himself, his heirs, executors and administrators, doth covenant, promise and agree, to and with the said State of New Jersey, that he will well and truly pay, or cause to be paid, the yearly rental herein reserved at the time and in the manner hereinbefore mentioned and appointed for the payment thereof, and will comply with, keep and perform all the other terms, conditions and limitations herein specified, according to the true intent and meaning of these presents.

In Witness Whereof, Edward L. Riley, Edmund Stites, Jr., and Jeremiah N. Ogden, the Commissioners comprising the said State Oyster Commission, have hereunto respectively set their hands and affixed the seal of the said State Oyster Commission, and the lessee aforesaid has also hereunto set his hand and seal this 9th day of November, 1901.

U. S. LEE. [L. S.]
Per FRANK LEE.
E. L. RILEY.
E. STITES, JR. [L. S.]
J. N. OGDEN.

Attest:
THOS. F. AUSTIN,
Oyster Sup't and Sec'y.

The term of this lease is extended, by agreement between the parties thereto, for the term of one year from the expiration thereof, subject, in all respects, to the covenants, terms, conditions and limitations within contained except —.

A. T. BACON, *Sup't.*

Dated September 20, 1902.

j The term of this lease is extended, by agreement between the parties thereto, for the term of one year from the expiration thereof, subject in all respects, to the covenants, terms, conditions and limitations within contained except —.

A. T. BACON, *Sup't.*

Dated August 31, 1903.

Received in the office of the State Oyster Commission at Maurice River, N. J., and recorded in Book of Leases No. 3, page 145.

k New Jersey Court of Errors and Appeals.

THE STATE, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE and HARRY SUTTON, Plaintiffs in Error.

Writ of Error.

[Filed March 16, 1904.]

NEW JERSEY, *ss:*

The State of New Jersey to the Chief Justice and other Justices of [L. S.] our Supreme Court of Judicature, Greeting:

Whereas, In the record and proceedings, and also in the giving of judgment, upon a certain indictment against Uriah S. Lee, Frank B. Lee and Harry Sutton, late of the township of Maurice, in the county of Cumberland, for illegally dreging for oysters and grand larceny (*pro ut* the said indictment and the several counts therein), whereof upon the first count in the said indictment they are convicted by a jury of the county aforesaid, taken between the State of New Jersey and the said Uriah S. Lee, Frank B. Lee and Harry Sutton, and judgment thereon given by said last-mentioned Court, and which said indictment, conviction, judgment and proceedings, by reason of error happening therein, we caused to be certified and brought into our Supreme Court, before the Justices thereof,
l and the judgment of the said Court of Quarter Sessions thereupon was in all things affirmed, as is said, manifest error hath intervened to the great damage of the said Uriah S. Lee, Frank B. Lee and Harry Sutton, as by their complaint we have been informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid, do command you that if judgment be thereupon given and the said judgment affirmed that you distinctly and openly send, under your seals, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals in the Last Resort in all causes of law, to be held at Trenton on Tuesday, the fifteenth day of March next, before our Judges of our said Court, that the record and proceedings aforesaid, being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the law of the State of New Jersey ought to be done.

Witness, William J. Magie, our Chancellor, at Trenton, this twenty-sixth day of February, in the year of our Lord nineteen hundred and four.

S. D. DICKINSON, *Clerk.*

JAMES BOYD POTTER,
JONATHAN W. ACTON,
Attorneys.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings, whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WILLIAM S. GUMMERE, *C. J.* [L. S.]

m New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error.

In Error to the Supreme Court.

Assignments of Error.

[Filed April 14, 1904.]

And now at this day the plaintiffs in error assign the following causes of error:

First. Because the Supreme Court decided that the Act of the Legislature of this State approved March 24, 1899, entitled "An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River Cove, in the State of New Jersey," and the supplements thereto approved March 22, 1901, entitled "An Act to amend an Act entitled 'An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River Cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act, and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware river," under which the indictment is found, are not in conflict with the Constitution of this State.

Second. Because the Supreme Court decided that said statutes are not in conflict with the Constitution of the United States.

n *Third.* Because the Supreme Court decided that proof was not necessary that the oyster beds in question had been "duly marked, buoyed and staked up" by or under the State Oyster Commission.

Fourth. Because the Supreme Court decided that said Commission, according to the eighth section of the Act of the Legislature of this State approved March 22, 1901, entitled "An Act to amend an Act entitled 'An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River Cove, in the State of New Jersey,' approved March twenty-fourth eighteen

hundred and ninety-nine, and for the better enforcement of the provisions of said act and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware river," must measure the leased lands, ascertain and locate their metes and bounds by ranges, mountains or other means, so that their limits may be accurately fixed and easily located, and must make maps thereof, but that any competent person may place the marks, buoys or stakes which are to render the leased beds distinguishable as private grounds.

Fifth. Because the Supreme Court decided that there was proof of correspondence between the oyster bed in question as staked and the bed leased or mapped.

Sixth. Because the Supreme Court affirmed the judgment of the Court below, whereas by the law of the land the said judgment of the Court below ought to have been reversed, annulled and altogether held for nothing, and judgment ought to have been given for the said Plaintiffs in Error against the Defendant in Error.

And the said Plaintiffs in Error pray that the judgment aforesaid may be reversed, annulled and altogether for nothing holden, and that they may be restored to all things which they have lost by occasion of such judgment, &c.

JAMES BOYD POTTER AND
JONATHAN W. ACTON,
Attorneys for and of Counsel with Plaintiffs in Error.

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error.

On Error to the Supreme Court.

Joinder in Error.

[Filed June 28, 1904.]

And now comes the Defendant in Error and says there is no error in the record and proceedings aforesaid, or in giving judgment aforesaid; and therefore, it prays that the said judgment and proceedings may be affirmed and that its costs may be adjudged to it, etc.

J. HAMPTON FITHIAN,
Atty. of Defendant in Error.

1 New Jersey Supreme Court.

NEW JERSEY, *ss:*

The State of New Jersey to Thomas W. Trenchard, Esquire, Law Judge of the Inferior Court of Common Pleas of the county of Cumberland, constituting the Court of Quarter Sessions, [L. S.] holden at Bridgeton, in and for the county of Cumberland, of the term of May, in the year of our Lord one thousand nine hundred and three.

Because in the record and proceedings, and also in giving judgment upon a certain indictment against Uriah S. Lee, Frank B. Lee and Harry Sutton, late of the township of Maurice River, in the county of Cumberland, for the illegal dredging of oysters and grand larceny.

Pro ut the said indictment, whereof before you they have been indicted and are thereof convicted upon the first count thereof by a certain jury of the county, taken between the State of New Jersey and the said Uriah S. Lee, Frank B. Lee and Harry Sutton, as it is said, manifest error has intervened to the great damage of the said Uriah S. Lee, Frank B. Lee and Harry Sutton, as from their complaint we have received information, we being willing, in their behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done them, the said Uriah S. Lee, Frank B. Lee and Harry Sutton, command you, that if judgment thereon be given, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Supreme Court of Judicature, to be held at Trenton, on
2 the first Tuesday of June next, and this writ; that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting the error, what of right and according to the laws and customs of New Jersey ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton aforesaid, the eighteenth day of May, one thousand nine hundred and three.

WM. RIKER, JR., *Clerk.*

JAS. BOYD POTTER, *Attorney.*

[Endorsed:] New Jersey Supreme Court. The State *vs.* Uriah S. Lee, Frank B. Lee and Harry Sutton. Illegal Dredging of Oysters and Grand Larceny. *Sur* Indictment. Writ of Error. Jas. Boyd Potter, Attorney.

3 The answer of Thomas W. Trenchard, Esq., Judge of the Court of Quarter Sessions in and for the County of Cumberland, within named.

The record and proceedings, and all things touching and concerning the same, whereof mention is within made, to the Supreme Court of the State of New Jersey, at the day and place within named, I certify is a schedule annexed to this writ, as I am commanded, and

I further certify that the said schedule contains the entire record of the proceedings had before the Court of Quarter Sessions in and for the County of Cumberland in the trial of said cause.

THOMAS W. TRENCHARD, *Judge.*

Cumberland County Court of Oyer and Terminer.

Convened at the Court House, in Bridgeton, Tuesday, May Fifth, A. D. Nineteen Hundred and Three, at Ten O'clock in the Forenoon.

Present: Hon. Charles E. Hendrickson, Justice of the Supreme Court, Presiding Judge.

Present: Hon. Thomas W. Trenchard, Judge of the Court of Common Pleas, Presiding.

Court opened by John B. Clevenstine, Crier.

4 The following named persons were called and sworn to serve as Grand Jurors for the May Term, 1903:

1. Morris Davis, Foreman,	Bridgeton.
2. William Morris,	Bridgeton.
3. Craig Elmer,	Bridgeton.
4. B. Frank Hires,	Bridgeton.
5. Frank R. Ayars,	Bridgeton.
6. Oscar Kellum,	Bridgeton.
7. Harry J. Geig,	Millville.
8. Thomas Whitaker,	Millville.
9. James E. Mitchell,	Millville.
10. Andrew J. Bennett,	Millville.
11. Samuel Rudy,	Vineland.
12. Fred. Davis,	Landis Township.
13. Thomas M. Tice,	Deerfield.
14. Winfield Bonham,	Hopewell.
15. Charles Fogg,	Stoe Creek.
16. Lemuel P. Sloan,	Greenwich.
17. James Mulford,	Fairfield.
18. Daniel C. Adams,	Lawrence.
19. James Mayhew,	Lawrence.
20. John Ladow,	Downe.
21. James R. Morris,	Commercial.
22. Henry Spence,	Maurice River.
23. Harry Powell,	Vineland.

The Grand Jurors having been duly sworn and charged by the Court, they retired to the Grand Jury room in charge of Howard Breeden and Edward Reeves, two constables sworn to attend them.

Wednesday, May 7th, 1902, the Grand Jury having finished their labors, they returned to the Court of Quarter Sessions, then and there holden in and for the said County of Cumberland. The

Honorable Thomas W. Trenchard, Judge of the Court of Common Pleas of said county, presiding.

5 The Honorable Charles E. Hendrickson, Justice of the Supreme Court hearing this Circuit and Judge of the Court of Oyer and Terminer, being then and there absent from this county, and made presentments to the said Court of Quarter Sessions of twenty-three true Bills of Indictment and consent that the Court amend them in form and false English, not altering the substance thereof without their privity or consent, when they were discharged.

G. W. BETCHNER, *Clerk.*

Rule Transferring the Indictments from the Court of Oyer and Terminer to the Court of Quarter Sessions for Trial.

On motion of J. Hampton Fithian, Prosecutor of the Pleas, that a rule be entered that all indictments presented at this term of court be handed down to the Court of Quarter Sessions for trial.

It is, therefore, ordered by the Court that all indictments found by the Grand Jury at this May Term of the Court of Oyer and Terminer be handed down to the Court of Quarter Sessions for trial

Rule entered May 7th, A. D. 1903.

G. W. BETCHNER, *Clerk.*

STATE OF NEW JERSEY, *Cumberland County, To wit:*

Be it remembered, that at a Court of Oyer and Terminer, holden at Bridgeton, in and for the county of Cumberland, on the
6 first Tuesday of May, in the year of our Lord one Thousand nine hundred and three, before the Honorable Charles E. Hendrickson, one of the Justices of the Supreme Court of Judicature of this State, and Thomas W. Trenchard, Judge of the Court of Common Pleas in and for the said county, according to the form of the statute in such case made and provided, by the oaths of:

Morris Davis,
William Morris,
Craig Elmer,
B. Frank Hires,
Frank R. Ayars,
Oscar Kellum,
Harry J. Geig,
Thomas Whitaker,
James E. Mitchell,
Andrew J. Bennett,
Samuel Rudy,
Fred. Davis,
Thomas M. Tice,
Winfield Bonham,
Charles Fogg,
Lemuel P. Sloan,
James Mulford,
Daniel C. Adams,
James Mayhew,
John Ladow,
James R. Morris,
Henry Spence,
Harry Powell,

good and lawful men of the said county, sworn and charged to inquire for the State in and for the body of the said county, it is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

MORRIS DAVIS, *Foreman.*

7 [Endorsed:] Cumberland Oyer and Terminer. May Term, 1903. Caption. Filed May 6, 1903. Cumberland Quarter Sessions. G. W. Betchner, Clerk.

STATE OF NEW JERSEY, *Cumberland County, ss:*

I, George W. Betchner, Clerk of the county of Cumberland, also Clerk of the Court of Common Pleas and Court of Quarter Sessions in and for the said county, do hereby certify the foregoing to be a true copy of the caption as is therein recited, as taken from and compared with the original caption now on file in my office.

In witness whereof, I hereunto set my hand and the seal of said Court and county, this twenty-fifth day of May, one thousand nine hundred and three.

[SEAL.] G. W. BETCHNER, *Clerk.*

8 Cumberland Oyer and Terminer, May Term, A. D. 1903.

CUMBERLAND COUNTY, *To wit:*

The Grand Inquest for the State of New Jersey, and for the body of the County of Cumberland, upon their respective oaths, present that Uriah S. Lee, Frank Lee, Harry Sutton, late of the Township of Maurice River, in the County of Cumberland, on the twenty-ninth day of January, in the year of our Lord one thousand nine hundred and three, at the Township of Maurice River, in the County of Cumberland, aforesaid, and within the jurisdiction of this court, unlawfully did dredge upon and throw and cast their oyster dredges for the purpose of catching oysters upon a certain oyster bed, land and ground duly marked, buoyed and staked up within the waters of the Delaware Bay, Delaware River and Maurice River Cove, in this State, to wit, within and under the tidal waters of the Delaware Bay and Maurice River Cove below the line running direct from the mouth of Straight to Cross Ledge Light House, and commonly known as the "southwest line," in the County of Cumberland aforesaid, belonging to and in the possession of Edward Allen, without permission of the said Edward Allen, the said Edward Allen being then and there the lessee of the said oyster bed, land and ground, under and by virtue of a lease thereof duly made and executed by the State Oyster Commission, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New
9 Jersey," approved March twenty-fourth, one thousand eight hundred and ninety-nine, and the acts amendatory thereof, to be exclusively used and enjoyed by the said Edward Allen for the taking, planting and cultivating of oysters, the said Edward Allen having been at the time of the granting of the said lease, and for twelve months next preceding said time, a citizen and actual resident of this State, and which said lease was then and there in full force and effect and the said Edward Allen then and there in the possession

and enjoyment of his term thereunder, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

And the Grand Inquest aforesaid, upon their respective oaths aforesaid, do further present that the said Uriah S. Lee, Frank Lee and Harry Sutton, on the day and year aforesaid, at the place aforesaid and within the jurisdiction of this court, fifty baskets of oysters of the value of fifty dollars, of the goods and chattels of Edward Allen then and there being found, unlawfully did steal, take and carry away, contrary to the form of the statute in such case made and provided, against the peace of this State, the government and dignity of the same.

J. HAMPTON FITHIAN,
Prosecutor of the Pleas of the County of Cumberland.

10 [Endorsed:] Cumberland Oyer and Terminer, May Term, 1903. The State *vs.* Uriah S. Lee, Frank Lee, Harry Sutton. Indictment for Grand Larceny and Illegal Dredging of Oysters. J. Hampton Fithian, Prosecutor of the Pleas. A True Bill. Morris Davis, Foreman. Filed May 6, 1903. Cumberland Quarter Sessions. G. W. Betchner, Clerk.

11 STATE OF NEW JERSEY, *Cumberland County, ss:*

I, George W. Betchner, Clerk of the county of Cumberland, also Clerk of the Court of Common Pleas and Court of Oyer and Terminer and Court of Quarter Sessions in and for said county, do hereby certify the foregoing to be a true copy of the indictment of Uriah S. Lee, Frank Lee and Harry Sutton, as is therein recited, as taken from and compared with the original indictment now on file in my office, which said indictment I do certify was presented by said Grand Jury to and received by the Court of Quarter Sessions then and there holden by Honorable Thomas W. Trenchard, Judge, the Honorable Charles E. Hendrickson, one of the Justices of the Supreme Court holding this Circuit at the May Term, one thousand nine hundred and three, being then and there absent from said county of Cumberland.

In witness whereof, I have hereunto set my hand and seal of said Court and County, this twenty-fifth day of May, one thousand nine hundred and three.

[SEAL.] G. W. BETCHNER, *Clerk.*

Court of Quarter Sessions for Cumberland County.

Convened at the Court House, in Bridgeton, on the Seventh Day of May, A. D. 1903, at Eleven O'clock A. M.

Present: Hon. Thomas W. Trenchard, Judge of the Court of Common Pleas of the said county of Cumberland, presiding.

Court called by John B. Clevenstine, Crier.

12 The Honorable Charles E. Hendrickson, Justice of the Supreme Court and Judge of the Oyer and Terminer Court

hearing this Circuit, being then and there absent from the said county, the Grand Jury having finished their labors make their presentments to said Court of Quarter Sessions, and by their foreman, Morris Davis, say that they find and present to this court twenty-three true bills of indictment, and consent that the court amend them in form and false English, not altering the substance thereof without their privity and consent, when they were discharged.

Cumberland Quarter Sessions.

Convened at the Court House, in Bridgeton, May 12th, 1903, at Ten O'clock in the Forenoon.

Present: Hon. Thomas W. Trenchard, Judge of the Court of Common Pleas of the said county of Cumberland, presiding.

Court opened by John B. Clevenstine, Crier.

On motion of J. Hampton Fithian, Prosecutor of the Pleas, the following persons were called to the bar of said court, charged, pleaded and sentenced as follows, viz.:

THE STATE
vs.
URIAH S. LEE, FRANK LEE, HARRY SUTTON.

Sur Indictment for Grand Larceny and Illegal Dredging of Oysters.

Plea—Not Guilty.

13 Cumberland Quarter Sessions.

Convened at the Court House, Bridgeton, May 14th, A. D. 1903, at Ten O'clock in the Forenoon.

Present: Hon. Thomas W. Trenchard, Judge of the Court of Common Pleas of said county of Cumberland, presiding.

Court opened by John B. Clevenstine, Crier.

Roll of Petit Jurors called.

Roll of Constables called.

THE STATE
vs.
URIAH S. LEE, FRANK LEE, HARRY SUTTON.

Sur Indictment for Grand Larceny and Illegal Dredging of Oysters.

J. Hampton Fithian, Walter H. Bacon, For State.

Jas. Boyd Potter, Jonathan W. Acton, Attorneys for Defendants.

The above named defendants having been indicted by the Grand Jury then and there inquiring in and for the body of the
14 county of Cumberland, at this May Term, A. D. 1903, for grand larceny and the illegal dredging of oysters, and having

been placed before the court and charged with said indictment, when they pleaded not guilty thereto.

On further motion of J. Hampton Fithian, Prosecutor of the Pleas, made this 14th day of May, A. D. 1903, that trial come on, the following named persons were called and sworn to serve as jurors to try the issue:

Jurors.

1. Samuel West, S.
2. J. Edgar Custer, S.
3. Joseph Dailey, S.
4. Morgan Smalley, S.
5. Charles Bowden, S.
6. Philip H. Sheppard, S.
7. Nicholas Griner, S.
8. David S. Sellers, S.
9. Wilbert Simmerman, S.
10. Howard Dolbey, S.
11. Samuel M. Watson, S.
12. Benjamin Lore, S.

Witnesses sworn for State:

1. Edward Allen, S.
2. Joseph Hilton, S.
3. Capt. James Boyle, S.
4. Alonzo Bacon, S.

Capt. James Boyle, recalled.

Witnesses sworn for Defendants:

1. Uriah S. Lee, S.
2. Frank B. Lee, S.
3. Harry Sutton, S.
4. John Sharpless, S.
5. Samuel Lee, S.
6. John Chance, S.
7. Lilburn Cox, S.
8. Frazier Wheldon, S.

Recess taken until Friday, May 15th, 1903, at ten o'clock, A. M.

Cumberland Quarter Sessions.

Convened at the Court House, in Bridgeton, May 15th, A. D. 1903, at Ten O'clock in the Forenoon.

Present: Hon. Thomas W. Trenchard, Judge of the Court of Common Pleas of said County of Cumberland, presiding.

Court opened by John B. Clevenstine, Crier.

Roll of Petit Jurors called.

Constables called.

The evidence being closed and counsel heard, the Court charged the jurors, who retired to a private room in the custody of Edward S. Reeves, a constable sworn to attend them; when after an absence of about ten hours they returned into court, and being called all answer to their names, and being asked if they have agreed upon a verdict, say they have, and by their foreman, Samuel West, say they find the defendants guilty in manner and form as charged in the first count of said indictment of illegal dredging, and not guilty of grand larceny, and so say they all. On further motion of J. Hampton Fithian, Prosecutor of the Pleas, made this 18th day of May, 1903,
that the court order the Sheriff to set the defendants before
16 the bar for sentence, and they being accordingly set to the
bar, the said court doth order and adjudge that Uriah S. Lee be confined in the State Prison, at Trenton, New Jersey, for the term of one year at hard labor and pay a fine of two hundred dollars, and from thence until the costs of pro-ecution are paid, and the said Frank Lee be confined in the State Prison, at Trenton, New Jersey, for the term of seven months at hard labor and pay a fine of fifty dollars, and from thence until the costs of prosecution are paid; and the said Harry Sutton be confined in the State Prison, at Trenton, New Jersey, for the term of seven months at hard labor and pay a fine of fifty dollars, and from thence until the costs of prosecution are paid.

Rule entered May 18th, 1903, on motion of

J. HAMPTON FITHIAN,
Prosecutor of the Pleas.

THE STATE
vs.
URIAH S. LEE, FRANK LEE, HARRY SUTTON.

Pursuant to a rule heretofore entered in the above stated cause, it is ordered and adjudged that the said Uriah S. Lee do undergo an imprisonment in the State Prison at Trenton, New Jersey, for the term of one year at hard labor and pay a fine of two hundred dollars, and from thence until the costs of prosecution are paid; and the said Frank Lee and Harry Sutton to undergo an imprisonment
in the State Prison at Trenton, New Jersey, for the term of
17 seven months each and pay a fine of fifty dollars, and from thence until the costs of prosecution are paid.

T. W. TRENCHARD, *Judge.*

STATE OF NEW JERSEY, *Cumberland County, ss:*

I, George W. Betchner, Clerk of the county of Cumberland, also Clerk of the Circuit Court and Court of Quarter Sessions in aforesaid county, do hereby certify the foregoing to be a true copy of the minutes, as is therein recited, as taken from and compared with the records thereof in the minute book of the Court of Oyer and Terminer, pages 88, 89, and in the minute book of the Court of Quarter Sessions, pages 425, 437 and 438, etc.

In witness whereof, I have hereunto set my hand and affixed the seal of said Courts and county, this twenty-fifth day of May, A. D. one thousand nine hundred and three.

[SEAL.] G. W. BETCHNER, *Clerk.*

Cumberland County Quarter Sessions.

THE STATE OF NEW JERSEY
vs.
URIAH S. LEE ET AL., Defendants.

On Indictment for Illegal Dredging of Oysters.

BRIDGETON, N. J., *May* 14, 1903.

18 *Testimony.*

Before Hon. Thos. W. Trenchard, Judge, and a Jury.

Appearances.

For the State—J. Hampton Fithian, Esq., Prosecutor, and Walter H. Bacon, Esq.

For the Defendants—James Boyd Potter, Esq., and Jonathan W. Acton, Esq.

It is stipulated and agreed by and between the attorneys for the State and for the several defendants, that the lease from the New Jersey State Oyster Commission to Edward H. Allen for Oyster Ground No. 137, Sec. B., in Maurice River Cove, in the waters of this State, and the leases from said Commission to the defendant Uriah S. Lee for Ground No. 82, Sec. B, and Ground No. 199, Sec. A, in said waters, be offered and admitted in evidence in this cause without formal proof of their execution, and that said leases shall be held and taken to vest a possessory right in the respective lessees in and to the oyster grounds therein described.

EDWARD H. ALLEN, sworn.

Direct examination.

By Mr. FITHIAN:

Ques. What is your name, Mr. Allen?

19 Ans. Edward H. Allen.

Ques. And where do you reside?

Ans. At Bivalve.

Ques. Is that in this county?

Ans. Yes, sir.

Ques. How long have you resided in this county?

Ans. I have resided in this county for about ten years.

Ques. Have you been a citizen of this State that long?

Ans. I got my papers out here five years ago.

Ques. Then you have been a citizen of this State for five years?
Ans. Yes, sir.
Ques. And you have resided in this county for at least ten years?
Ans. Yes, sir.
Ques. What is your business?
Ans. Oysterman.
Ques. How long have you been in the oyster business?
Ans. About fourteen years.
Ques. In Maurice River Cove?
Ans. About twelve years in Maurice River Cove.
Ques. Where prior to that?
Ans. In the Chesapeake.
Ques. Have you a lease for any ground in Maurice River Cove from the State Oyster Commission?
Ans. I have.
Ques. Will you examine this paper and say whether or not it is your lease?
Ans. That is my lease; yes, sir.
Ques. Have you ground in Maurice River Cove and Delaware Bay?
Ans. Yes, sir.

(Lease offered in evidence and marked Ex. 81.)

20 Ques. What is the number of your ground?
Ans. No. 137.
Ques. What section?
Ans. Section B.
Ques. Can you show to the members of the jury your ground on the map there? Can you point it out?
Ans. It is there. (Points on map.)
Ques. How many acres are there in that ground?
Ans. I think six.
Ques. Is that ground marked by anything?
Ans. Yes, sir; there was a buoy on there besides stakes.
Ques. Were you down there on the 29th day of January last?
Ans. Yes, sir.
Ques. Was your ground marked or staked up on that day?
Ans. It was.
Ques. Did you find it so when you went there?
Ans. Yes, sir; found it so.
Ques. How was it marked up on that day when you were there?
Ans. There were stakes in each corner, a buoy in the north corner and this stake broke out of the south corner.
Ques. Now just show which is the north corner?
Ans. This is the north corner. (Indicates on map.)
Ques. That is the north corner?
Ans. Yes, sir.
Ques. Was there a buoy in that corner?
Ans. Yes, sir.
Ques. Where is the south corner?
Ans. There. (Indicating.)

Ques. What was in the south corner?
Ans. A marker.
Ques. Is the marker still there?
Ans. Yes, sir; 137 B.
21 Ques. Was this marker in this ground on the 29th day of January last?
Ans. It was.
Ques. Did you take it from the ground?
Ans. Broke it out from the ground.
Ques. On what day?
Ans. The 29th of January.
Ques. Was the marker above water?
Ans. Broke off in the water right there. (Indicating.)

(Marker and stake offered in evidence and marked Ex. S2.)

Ques. Now, Mr. Allen, on the 29th of January last did you go down to Maurice River Cove?
Ans. I did.
Ques. And where did you go from?
Ans. Maurice River.
Ques. Who was with you?
Ans. Mr. Hilton, Captain Joseph Hilton.
Ques. And on whose boat were you?
Ans. Hilton's boat.
Ques. What boat was that?
Ans. The Golden Light, the boat he had just come in possession of.
Ques. How recently before you went down there?
Ans. About two months, I should judge.
Ques. He had only owned her a short time?
Ans. A short time; yes, sir.
Ques. Now will you point out on the map to this jury where you started from, where you went, and what you discovered that day?
Ans. We came down here from Maurice River (indicating on map), going down to our ground in this direction, tacking over inshore there to my grounds. We tacked over inshore to my
22 ground, and there seen the Steelman R. Lee, seen her jagging around in my ground, and we kept coming closer, and we seen that he was dredging there.
Ques. Now what do you mean when you say that you saw he was dredging there?
Ans. He was heaving the dredges and winding them in.
Ques. How are dredges brought on board a boat?
Ans. After they are cast overboard they are wound in by a crank.
Ques. And you saw him winding his dredges?
Ans. Yes; I saw him winding them.
Ques. Was he on your ground at that time?
Ans. Yes; on my ground. I was close enough to tell they were on my ground.
Ques. You could see that, could you?
Ans. I could see it plain?

Ques. How close did you get to him?

Ans. Close enough to see him throw his dredge and wind and heave. I seen him two or three times after we seen my buoy in the north corner, which showed about a foot out of water. I seen him make two or three hauls plainly.

Ques. But where were you at that time with reference to your ground?

Ans. About here. (Indicating on map.)

Ques. That would be east or west?

Ans. It would be east.

Ques. And you were close enough to see him make three hauls?

Ans. Yes, sir.

Ques. Were there any dredges dumped or anything of that kind?

Ans. Well, they were heaving and winding and doing something. They must have dumped them if there was anything in them; must have dont it.

Ques. Well, tell us about it.

23 Ans. We got close enough to Mr. Lee to see that he was working on my ground, and when we got close to him, on his last haul down, he trimmed his boat in and was going to the windward. He went down to his grounds, shot his boat up in the wind and one man got in the yawl boat as if in the act of setting out stakes in the ground.

Ques. Now where is his ground? Did you hail him?

Ans. Hailed at him, but he took no notice, but went down to his ground.

Ques. Show us on the map where his ground is.

Ans. No. 28. (Indicating on map.)

Ques. And how far is it from your ground where you say you saw Lee working to Lee's ground?

Ans. Well, there is room for a big ground between them.

Ques. And how far would you say it is, about?

Ans. Well, I suppose sixteen or eighteen hundred feet, somewhere around that; room for a large ground.

Ques. Between sixteen and eighteen hundred feet?

Ans. Yes; as near as I can tell.

Ques. What happened after that?

Ans. He went to his ground and one man jumped in the yawl boat as if in the act of staking up, and we went about and started towards home. As soon as we went about and started towards home the man jumped in the yawl boat and started down.

Ques. What do you mean when you say he started down?

Ans. Started down the cove, and we started after him. We went down, I suppose, a mile and a half to two miles, but didn't gain any on him, and thought it was like child's play.

(Objected to.)

Mr. FITHIAN: I think that the witness may explain his actions.

24 The COURT: I think that the language might be objectionable, and I will strike it out. Just let the witness confine himself to what Captain Lee did.

Ques. How far did you follow him?
Ans. A mile or mile and a half.

Mr. FITHIAN: Now does the Court think it objectionable to ask why he followed him no further?
The COURT: I see no objection to it.

Ques. Why did you follow him no further than that?
Ans. We wasn't gaining on him any, and it didn't seem to us as though it was any use to follow him any further as long as we couldn't gain on him.
Ques. In what direction were you going?
Ans. Towards the Paris Green Grounds.
Ques. North or south?
Ans. South.
Ques. Did you see anybody on your way down?
Ans. Not a boat.
Ques. Do you know Captain James Boyle?
Ans. I do.
Ques. Did you see him that day?
Ans. I seen him that day later on, but not when going on down after the Lee, not at that time.
Ques. Do you know Captain Steel Lee?
Ans. Yes, sir.
Ques. Do you know him well?
Ans. Yes, sir.
Ques. Do you know Frank Sutton or Harry Sutton?
Ans. I do.
Ques. Were you close enough to the Steelman R. Lee on the day in question to see who was on board of her?
Ans. Yes, sir.
25 Ques. Whom did you see and recognize, if anybody, on board the Lee, who were dredging on your ground?
Ans. These three mentioned.
Ques. What three?
Ans. Mr. Lee, Sutton and Frank Lee.
Ques. These three defendants here?
Ans. Yes, sir.
The COURT: What is Mr. Lee's first name?
Mr. FITHIAN: Uriah S. Lee.
Ques. Did you see any oysters on his boat?
Ans. No, we didn't; bue there may have been oysters on it.

(Objected to.)

Ques. There may have been oysters there and you not have seen them?
Ans. Yes, sir.
Ques. Why?
Ans. On account of the waist.
Ques. What do you mean?
Ans. Above the deck of the boat and running around the boat.
Ques. And raised above the deck?

Ans. Yes, sir.
Ques. Did you have any oysters on your grounds?
Ans. Yes, sir.
Ques. How many oysters did you have there?
Ans. Two spring plantings and a load of Chesapeakes.
Ques. How many Chesapeake oysters did you have?
Ans. Four hundred and sixty some bushels?
Ques. What were they worth a bushel?
26 Ans. I paid 43 cents a bushel for them, 460 bushels at 43 cents.
Ques. How many bushels of oysters did you have for spring planting?
Ans. I couldn't tell you that. I didn't measure them.
Ques. Can't you give your figure?
Ans. Well, I think as near as I can tell there were about 3,000 bushels, spring planting.
Ques. And what were they worth a bushel on the ground?
Ans. Well, I wouldn't like to sell them for any less than $1.00 a bushel.
Ques. There were 3,000 bushels of spring planting and 460 bushels of Chesapeakes on your ground at that time?
Ans. Yes, sir.
Ques. And had you examined those oysters prior to January 29th?
Ans. Yes, sir.
Ques. When?
Ans. In November; the first part of November.
Ques. Did you find them there at that time?
Ans. Yes; there were there and living?
Ques. They were there?
Ans Yes, sir.
Ques. Is it possible for oystermen to tell whether or not ground has been worked?
Ans. It is.
Ques. By what method do you tell, Mr. Allen.
Ans. Well, if the ground has been worked on there is generally some of the oysters with the bills broken off, and once in a while the teeth of the dredge cut through and kills it.
Ques. Have you been at your oyster ground since the 29th of January?
Ans. Yes, sir.
Ques. How soon afterwards?
27 Ans. I went to work on the following Monday; the 29th of January was on Thursday, and I went to work the following Monday.
Ques. You went to work on the following Monday?
Ans. Yes, sir.
Ques. Had your oysters been disturbed?
Ans. Yes, sir; every one of them was gone.
Ques. What do you think was the value of the oysters which you

had placed on the ground there, if they had been there on the 29th day of January?

Ans. Well, I wouldn't like to take less than $3,000 for the ground as it stood, without their being disturbed.

Ques. And when you went on the ground to work on it the Monday following, the 29th of January, you found the oysters nearly all gone, you say?

Ans. Yes, sir.

Ques. Have you seen Captain Lee since that day?

Ans. Yes; I have.

Ques. Where did you see him and what conversation, if any, took place between you?

Ans. Captain Lee met me at the steamboat the following Monday morning after I had seen him on my ground, and he said he wanted to see me. I says, "All right; when shall I see you?" He says, "I will be over to Captain Hilton's boat." I said, "All right." He didn't come over. We put in around there later on and saw Mr. Lee.

Ques. Did he say anything to you?

Ans. Yes; he said he had heard that I had reported him.

Ques. Had heard that you had reported him?

Ans. Yes, sir.

Ques. What did you tell him?

Ans. I told him that I had.

Ques. Well, what else was said at that time?

Ans. He said he wasn't dredging there.

28 Ques. Did he make any other statement then?

Ans. He said his board was frozen up.

Ques. What did he mean by board?

Ans. Said his center-board was frozen up.

Ques. On the 29th of January, when you were down there and saw them on your ground, did you notice anything that would lead you to infer that this board was frozen up?

Ans. No, sir.

Ques. You were in possession of this ground under this lease, were you not?

Ans. Yes, sir.

Cross-examination.

By Mr. ACTON:

Ques. Mr. Allen, of what place are you a native?

Ans. At the present time?

Ques. No; where were you born?

Ans. In England.

Ques. You have taken out your papers in this country?

Ans. In this Court.

Ques. Have you taken out your last papers?

Ans. I didn't need any.

Ques. And you took out one set about five years ago, and since that time you have been residing at Bivalve?

Ans. Yes, sir.
Ques. And you have been in the oyster business?
Ans. Yes, sir.
Ques. You have worked more or less in Maurice River Cove during your experience as an oysterman, have you not?
Ans. Yes, sir.
Ques. And you are familiar with the grounds there?
Ans. Yes, sir.
29 Ques. How long have you worked in Maurice River Cove?
Ans. In what way do you mean, for myself or some one else?
Ques. I mean in such a way as to give you knowledge of the location of the various oyster grounds there.
Ans. Well, I have worked there about twelve years, on and off.
Ques. And by your work there you have become more or less familiar with the oyster grounds in Maurice River?
Ans. I have.
Ques. Now, how many pieces of ground did you have a lease for there?
Ans. Just the lease for the one ground.
Ques. And when did you get that lease?
Ans. I think that the lease there will state.
Ques. I want to test your memory?
Ans. I have had that lease renewed; it is good for this year. I think you will find in 1901.
Ques. Did you have a lease for any ground there prior to 1901?
Ans. No; I hadn't.
Ques. Then it is only since the year 1901 that you have been interested in oystering in Maurice River Cove to the extent of being a lease-holder there?
Ans. Yes, sir; that is it.
Ques. Now, on the 29th day of January last, you started out from Maurice River, did you?
Ans. I did.
Ques. About what time did you start out from Maurice River on that day?
Ans. About nine to half-past nine in the morning.
Ques. Do you remember what kind of a morning it was?
Ans. Yes.
Ques. What kind of a morning was it?
30 Ans. It was a nice morning, with the wind southeast.
Ques. It wasn't foggy?
Ans. No, sir; it was not. It was a clear day.
Ques. How long do you say it was clear?
Ans. In the morning it was clear.
Ques. When did it cease to be clear?
Ans. About half-past three or four o'clock. It shut in foggy at that time.
Ques. It rained in the meantime, did it not?
Ans. No, sir.
Ques. You remember the day very well, I presume.

Ans. Yes, sir.

Ques. The incidents of that day are very clearly stamped upon your memory, are they?

Ans. Some of them.

Ques. Now, did you start out in a sloop or schooner?

Ans. In a sloop.

Ques. What was her name?

Ans. The Golden Light.

Ques. And she belonged to Captain Hilton?

Ans. Yes, sir.

Ques. And you and Captain Hilton went out together, did you?

Ans. We did.

Ques. You went out with him or he went out with you?

Ans. I went out with him, in his boat.

Ques. Did you have a previous arrangement with him to go out?

Ans. Yes, sir.

Ques. Made it the night before?

Ans. Well, not exactly the night before, I wouldn't say. We were going down to stake up.

Ques. Did you have any whisky on board?

Ans. No, sir.

Ques. No Jamaica ginger?

31 Ans. No, sir.

Ques. Were you under the influence of liquor in any way?

Ans. No, sir.

Ques. Was he?

Ans. No, sir; he was not, I am satisfied of that.

Ques. Hadn't he been drinking?

Ans. No, sir.

Ques. Did you notice him for that?

Ans. Yes; for I was with him all morning.

Ques. Is he not a man who does drink?

Ans. He takes a little once in awhile.

Ques. Does he take Jamaica Ginger?

Ans. Not that I know of.

Ques. Then you were both perfectly sober that morning, were you?

Ans. Yes, sir.

Ques. Now you say you started out about half-past nine?

Ans. Nine or half-past.

Ques. From Maurice River?

Ans. Yes, sir.

Ques. Did any other boats start out about the same time?

Ans. There was no boat close to us; I don't remember any.

Ques. Didn't you see any at that time?

Ans. No; I didn't see any start with us.

Ques. When you got under way didn't you see any?

Ans. No, sir.

Ques. Do you know the Elmira Cox?

Ans. I do.

Ques. Didn't you see the Elmira Cox going with you?

Ans. No, sir.
Ques. Where was she when you started?
Ans. I couldn't tell you.
Ques. Where were you when you first saw her?
32 Ans. I didn't see the Elmira Cox that day.
Ques. You are positive of that?
Ans. I am; yes, sir.
Ques. If she had been anywhere around you would have seen her, wouldn't you?
Ans. I might have seen her.
Ques. Why do you say you might have seen her?
Ans. Well, she might have been around when we started, but I might not have noticed her. I might have enough work to do not to see her.
Ques. Then for all you know the Elmira Cox might have been there?
Ans. I don't know about that.
Ques. You only say she wasn't with you; is that right?
Ans. At what time? When we started out of the river, do you mean?
Ques. That day there
Ans. That day?
Ques. Yes.
Ans. He may have been; there were a great many boats around us that day.
Ques. I ask you especially about this boat. You say you know the Elmira Cox. I ask you especially if that boat was with you that day?
Ans. Not to the best of my knowledge. I didn't see her at all.
Ques. You know her captain, don't you?
Ans. Well, I am not personally acquainted with him.
Ques. But you know who he is?
Ans. I know him when I see him.
Ques. Who is he?
Ans. I don't know his name; Sharples, I think.
Ques. Now you say you have no recollection of seeing that boat that day?
Ans. No, sir.
Ques. Have you any recollection of seeing any boat that day other than Mr. Lee's boat?
33 Ans. Yes, sir.
Ques. What other boats did you see?
Ans. Well, I seen the boat called the Two Bills.
Ques. Isn't that boat known as the Carlisle?
Ans. That is the Carlisle; yes, sir.
Ques. You call it the Two Bills?
Ans. Yes, sir.
Ques. Where did you see her?
Ans. I seen her in the cove.
Ques. When?
Ans. The same day.

Ques. At what time?

Ans. Just before we got to Mr. Lee's, about twelve o'clock, somewhere around there.

Ques. Where was she with reference to you?

Ans. At what time?

Ques. When you first saw her?

Ans. She was down toward Mr. Fowler's ground.

Ques. What time was that?

Ans. About half-past eleven.

Ques. Before this alleged dredging or after?

Ans. Before.

Ques. Now will you step to the map and show me the relative positions of your boat to the Carlisle and Mr. Lee's boat at that time?

Ans. There is my ground right there (indicating on map), and we were coming down this way when we first saw the Carlisle.

Ques. Was she ahead of you or behind you?

Ans. No, sir; we didn't overtake her. We was about here (indicating) and the Carlisle somewhere over there, as near as I can tell. Mr. Lee was over here.

Ques. I say when you were over here you could see Mr. Lee on your ground?

Ans. I don't say he was on my ground then, but afterwards.

Ques. What was he doing at that time?

34 Ans. He was sailing.

Ques. Was he sailing all the time?

Ans. He was sailing. Dragging around and around. I don't know what he was doing at that time.

Ques. Well, where were you when you first noticed that he was dredging?

Ans. We were coming towards home.

Ques. Please point on the map about where you were.

Ans. About here (indicating.)

Ques. Somewhere about here?

Ans. Yes, sir.

Ques. You could see down on this lot; that is your lot, I believe, and could see that they were dredging?

Ans. Not from there.

Ques. Please tell me how far you got before you first noticed that he was dredging?

Ans. About out here (indicating).

Ques. When you got about there you just noticed he was dredging?

Ans. I noticed he was on my ground.

Ques. Where was the Carlisle at that time?

Ans. The Carlisle was away down here somewhere.

Ques. Then you continued on sailing toward him?

Ans. Yes, sir.

Ques. What did he do, then, at the time you kept on sailing toward him?

Ans. He was dredging when we got closer to him; I could see him.

Ques. Could you recognize the people on board?
Ans. Not all of them at that time.
Ques. Could you see any one winding the dredge?
Ans. Yes, sir.
Ques. Did you recognize him?
Ans. Yes, sir.
Ques. Did you use glasses?
Ans. No, sir.
Ques. How close were you to him?
35 Ans. Close enough to see him make two or three hauls after seeing my buoy, which was half out of water.
Ques. How close were you to him?
Ans. I couldn't answer that.
Ques. A quarter of a mile, half a mile or a mile?
Ans. I was close enough to see what they were doing, but couldn't answer how far it was on the water.
Ques. Couldn't you make any estimate; you have given the distance between your lot and his lot.
Ans. To the best of my judgment, we were a little over a ground away from him.
Ques. What do you mean by a ground; they differ in size, don't they?
Ans. Yes, sir.
Ques. Here is one quite large (indicating); here is another quite large, and here is one quite small. How large is the one of which you are speaking?
Ans. About 1,200 or 1,400 feet.
Ques. Couldn't you recognize a man 1,400 feet away, so as to tell who he is?
Ans. If I know him well, I can.
Ques. Well, now, which one of these men did you recognize first?
Ans. Well, Mr. Lee was at the wheel——
Ques. Who was doing the dredging?
Ans. They were in the middle of the deck winding.
Ques. Which one was winding.
Ans. Why, they was all winding.
Ques. All three?
Ans. Yes, sir.
Ques. Captain S. Lee left the wheel and went up?
Ans. Yes, sir.
Ques. Who steered when he left the wheel?
Ans. No one.
Ques. They didn't need to do any steering when winding, did they??
Ans. No, sir.
36 Ques. Does the winding retard the boat?
Ans. In what way?
Ques. From going ahead?
Ans. Not much.
Ques. It didn't retard the progress of the boat at all, did it?
Ans. No, sir.

Ques. When the dredge is overboard and being wound in, doesn't the winding in of that dredge retard the boat?

Ans. The dredge does.

Ques. Didn't the dredge retard this boat?

Ans. Oh, yes; it retarded it.

Ques. And you were about 1,200 feet away?

Ans. Yes; about a quarter of a mile.

Ques. And you were sailing right on and saw them make two or three hauls afterward, did you?

Ans. Yes, sir.

Ques. And still you sailed right on toward them?

Ans. Yes, sir.

Ques. And how long did it take them to make a haul?

Ans. A very short time.

Ques. About how long.

Ans. Well, sometimes a good deal quicker than others.

Ques. Yes; but how long were these?

Ans. These were very short—especially the last one.

Ques. That doesn't convey any idea. How short were they in minutes, do you suppose?

Ans. Well, I couldn't tell the exact time. Some are a great deal quicker than others. I can't give any better answer.

Ques. Well, you saw these hauls; you were interested in watching them, were you not?

Ans. Yes, sir.

Ques. You were especially interested at this time when some one was on your ground, were you not?

37 Ans. Yes, sir.

Ques. And couldn't you give us any idea of how long these men were occupied with the making of these hauls; would they average five minutes apiece?

Ans. Close to that; sometimes more and sometimes less.

Ques. Do you think they were about fifteen or twenty minutes in making these hauls?

Ans. About that.

Ques. Did you have a pretty good breeze that day?

Ans. No; not very good.

Ques. Then the boat didn't make very good progress while they were engaged in this work, did it?

Ans. Not very.

Ques. You kept sailing rapidly on, however, did you?

Ans. Yes, sir.

Ques. Now how close were you to them when they made their last haul?

Ans. Well, I couldn't tell you exactly; somewhere about down here. (Indicating.)

Ques. Whose ground is that?

Ans. That ground right here? I don't exactly know.

Ques. Then how do you know you were on this ground if you don't know whose it is? Was it marked with stakes?

Ans. Yes, sir.

Ques. That ground was marked with stakes?
Ans. Yes, sir.
Ques. Then the only thing you know is that you were on some ground that was marked with stakes at that time, but you don't know whose ground it was?
Ans. I knew whose ground it was for the simple reason that it was the nearest ground to mine, and then I knew the stakes.
Ques. Now, Mr. Allen, weren't the stakes at that time nearly all obliterated?
Ans. No, sir.
38 Ques. Weren't the stakes generally throughout the cove on the 29th day of last January almost entirely obliterated by the ice?
Ans. No, sir; not around that locality, they wasn't?
Ques. Did you go up there at high water?
Ans. No, sir; it wasn't high water.
Ques. Was it low water?
Ans. No, sir; it wasn't low water.
Ques. How was the tide running?
Ans. The tide was running down.
Ques. At high water in the cove, could you see the marked ground that day?
Ans. Yes, sir; my ground, I could.
Ques. Your ground was perfectly marked?
Ans. It was marked; yes, sir.
Ques. It was perfectly marked; very carefully marked, was it?
Ans. The stakes were in very careful.
Ques. Did they show at high water?
Ans. They showed at high water.
Ques. Did you observe them perfectly that day?
Ans. Yes; but it wasn't high water.
Ques. They showed well out of the water, did they?
Ans. Yes; but it was not high water.
Ques. Didn't you reset some of your stakes at that time?
Ans. Afterwards.
Ques. Why did you reset them if they showed so well on that day?
Ans. Because we always do. That is the reason I went down.
Ques. Didn't you go down to reset your old stakes?
Ans. No, sir; to stake new stakes.
Ques. Why were you going to do that then if the old stakes plainly marked your lot? Is that one of your stakes? (Indicating.)
Ans. Yes; that is one of the old stakes.
39 Ques. That is one of the old stakes which you broke off that day. Now which corner was that?
Ans. The south corner.
Ques. Where on the map is the south corner? Is that the south corner?
Ans. Yes, sir.
Ques. You are positive of that and of every other statement you have made?
Ans. Yes, sir; on my ground.

Ques. Point to it again, please. Look at it well and point it out.

Ans. It is here. (Indicating.)

Ques. Where is the north corner of your ground?

Ans. Here. (Indicating.)

Ques. That is the north corner? You are positive of that, are you? You recognize that from the map, do you?

Ans. Yes, sir.

Ques. You don't have to, though—you know this ground so well. Now, which corner was that from which you took this stake?

Ans. From the south corner.

Ques. Then from that corner. Now let's go over these corners again. Where is the north corner, did you say?

Ans. Here. (Indicating.)

Ques. You didn't say that before. You looked at it afterwards, did you?

Ans. Yes, sir.

Mr. FITHIAN: I hardly think that is proper cross-examination of this witness. The little side remarks to the jury are hardly proper.

Ques. Now please show me again the corner from which you got this stake; the south corner?

Ans. This here. (Indicating.)

Ques. Now this is just the way it was, is it?

40 Ans. Yes, sir.

Ques. And this is the marking on it? (Examines stake.)

Ans. Yes, sir; the same as we got it.

Ques. Did you break it off on the water or over it?

Ans. Over.

Ques. How high does the tide rise and fall in Maurice River?

Ans. It rises and falls six feet, but it varies.

Ques. Is it covered at high water?

Ans. Yes, sir; it may be high tide sometimes, but it varies.

Ques. Were any of your other buoys or marks or monuments covered at high water?

Ans. Not that I know of. At some high waters, as I said before, are a good bit more than others. Of course, if there comes an exceptionally big tide in, and comes on my ground, I couldn't tell where they were.

Ques. Did you have any buoys or brush or stakes in your boat to set out the day you went down there?

Ans. I had; yes, sir.

Ques. How long prior to that day was it that you had been down on this ground?

Ans. In November.

Ques. You hadn't been down there prior to this day before November?

Ans. No, sir.

Ques. And this was the 29th day of January?

Ans. Yes, sir.

Ques. Did you go around to see the corners of your lot to examine it that day?

Ans. Yes, sir.

Ques. Did you set new stakes at the corners?

Ans. Yes, sir.

Ques. On that day?

Ans. Yes, sir.

Ques. How many of these stakes did you set at the corners on that day?

41 Ans. I set one at some corners and two at others.

Ques. You did that in spite of the fact that stakes for the corners were not needed?

Ans. I didn't say that.

Ques. Then they were needed?

Ans. The old stakes might be good enough, but when we go down we usually stake up, whether they are needed or not.

Ques. Did you test any of these old stakes to see whether new ones were needed?

Ans. No, sir.

Ques. How long were you out there that day?

Ans. We were there two or three hours; four hours, about.

Ques. At what time did you get on your ground?

Ans. A little after twelve.

Ques. What time did you go back to Maurice River?

Ans. About half-past three?

Ques. You remember that, do you?

Ans. Yes; around three or half-past three.

Ques. Did you see the Lee boat at that time, when you went back?

Ans. No, sir; I didn't.

Ques. When did you last see the Lee boat?

Ans. Well, I didn't notice when we went back where he was, but I knew he went below.

Ques. Can you point out his Paris Green lot on the map?

Ans. No, sir.

Ques. Do you know where it is?

Ans. No, sir.

Ques. Didn't you say in your direct examination that he went down to his Paris Green lot?

Ans. No, sir.

Ques. You made no allusion to his Paris Green lot?

Ans. I said he went down towards his Paris Green lot.

42 Ques. Will you show me where Paris Green is?

Ans. Paris Green is down here somewhere (indicating).

Ques. Do you know the lot?

Ans. Which lot?

Ques. The Paris Green lot.

Ans. It is down here. I haven't any ground there, and am not acquainted there.

Ques. About how far was the Paris Green lot from your lot?

Mr. FITHIAN: I might suggest to counsel that Paris Green is a collection of lots, and not a particular lot.

Ques. About how far is it from Paris Green to your lot?

Ans. About two miles, I suppose, as near as I can tell, or more.

Ques. You could watch his boat while it was down there, couldn't you?

Ans. We could; yes, sir.

Ques. Did he tarry there?

Ans. Well, we were busy. I didn't notice that after we were down.

Ques. Then after you took your eyes off of him you paid no more attention to him?

Ans. No, sir; had no reason to.

Ques. Did you make any inquiries to find what oysters he brought back with him?

Ans. No, sir.

Ques. Now, have you ever from that day to this?

Ans. No, sir.

Ques. You both came back to the same place, did you not?

Ans. I don't know about that.

Ques. You both came back to Maurice River, didn't you?

43 Ans. That day?

Ques. Yes.

Ans. I don't know. I didn't see him that day after we came up.

Ques. Do you know whether he left his ground below before you did, or not?

Ans. No; I couldn't answer that. I don't know whether he did or not; he could have done it.

Ques. I ask you what you saw him do.

Ans. I don't know what he done.

Ques. Did you take any steps to ascertain whether or not he found any oysters?

Ans. No, sir.

Ques. You made this complaint against him, did you not?

Ans. Yes, sir.

Ques. He has been indicted upon your complaint, hasn't he?

Ans. Yes, sir; I suppose so.

Ques. Did you charge him with stealing your oysters?

Ans. I charged him with working on my ground.

Ques. Didn't you charge him with stealing your oysters?

Ans. I charged him with dredging on my ground.

Mr. BACON: The complaint, I think, was drawn in my office and made by Captain Fagan, oyster superintendent.

Mr. ACTON: If your Honor please, I think I have a right to know by what right a charge of larceny was made against this man.

Mr. FITHIAN: I suppose I am the cause of that. Pursuant to this warrant, an indictment with two counts was framed, one for illegal dredging and one for larceny.

44 Q. Did you know whether or not these people had any of your oysters on board?

Ans. No, sir.
Ques. You don't know to this day whether he had or not, do you?
Ans. No, sir.
Ques. Did you make any charge against them for having any of your oysters on board?
Ans. No, sir.
Ques. The only charge that you made is that you believed they were on your ground and threw a dredge?
Ans. Yes, sir.
Ques. And your reason for making that charge was that you thought you saw them there?
Ans. No, I don't think; I know it.
Ques. You are positive of it?
Ans. Yes, sir.
Ques. Then if you are positive of it you have to think it, don't you?

(Objected to.)

Ques. When did you make your complaint?
Ans. On the Saturday following.
Ques. This was on Thursday?
Ans. That was on Thursday.
Ques. Where did you go to make the complaint?
Ans. To Mr. Bacon.
Ques. Did you go to him, or did he go to you?
Ans. I went to him.
Ques. Do you know whether or not the oyster dredges were in place on the Lee boat when you saw her closest?
Ans. What, on the sides?
Ques. In the waist? Did you see the dredges?
Ans. Yes; I seen the dredges.
Ques. Where were they when you saw them?
Ans. They were coming out of the water.
45 Ques. Did you see the dredge come out of the water?
Ans. Yes, sir.
Ques. On your side of the boat, or the other, or were they on the opposite side of the boat, or both sides?
Ans. We could only see toward us. Can't have both sides towards us.
Ques. Were they working two dredges then?
Ans. Well, I could only see the one towards us then.
Ques. Would they throw them both in at the same time?
Ans. No, sir; would wind the lower one and then to the lee of the sail.
Ques. That one was toward you?
Ans. Yes, sir.
Ques. The other boat lay broadside to you?
Ans. Yes, sir.
Ques. And you pointed right out here going down on her?
Ans. Yes, sir.

Ques. They tacking and you going with a fair wind?
Ans. Tacking, do you say?
Ques. Were they tacking or going with a fair wind?
Ans. Well, they had their sheets out at the time we seen them.
Ques. Well, how were they with reference to you; to the windward or leeward of you?
Ans. To windward of us.
Ques. Then you were tacking toward them?
Ans. We were going toward them.
Ques. Were you going into the wind with them?
Ans. No, sir.
Ques. They were directly to the windward of you, you say. Then how could you get to them without tacking?
Ans. They were going this way (indicating). One was coming from this quarter and we was headed towards it. You see, they putting in ahead of us threw them to windward of us. A boat has to be to windward of you to cross bows.
46 Ques. Now, just make that diagram on the carpet again, will you? Which way was the wind?
Ans. The wind was southeast. We came this way; Mr. Lee was headed that way (indicating). We was headed this way toward him.
Ques. Were you looking as close into the wind as you could get?
Ans. Yes, sir.
Ques. Were you ahead of his bow or toward his stern?
Ans. Headed right towards his broadside.
Ques. Toward his broadside?
Ans. Yes, sir.
Ques. And you saw them winding in the dredges there?
Ans. Yes, sir.
Ques. And you recognized Mr. Lee assisting in winding?
Ans. Yes, sir.
Ques. And Sutton and Frank Lee; you recognized all three winding, did you?
Ans. Yes, sir.
Ques. And nobody was paying any attention to the boat?
Ans. No, sir.
Ques. And you saw them do that three times right there hand running?
Ans. We did.
Ques. Within twenty minutes?
Ans. Yes, sir.
Ques. While you were in the same relative positions?
Ans. Not exactly in the same positions; we couldn't be.
Ques. I am asking you to explain.
Ans. I am answering your question. Is it necessary for me to explain all this? As I told you, we were coming this way toward Mr. Lee, and the last time we met he was going toward his ground.
Ques. Where was he the first time?
47 Ans. He was on the other tack.
Ques. Beating up and down in this place?

Ans. Working in that place—he didn't have to beat to keep in the ground. There was no need to beat at all.

Ques. Did you see his boat when it went out that morning?

Ans. No, sir.

Ques. Did you see his boat when it approached your ground that day?

Ans. No, sir.

Ques. Was it on your ground when you first saw it?

Ans. I can't swear that it was on my ground when I first saw him, because we were too far away.

Ques. When you first recognize that he was dredging, was he on your ground then?

Ans. Yes, sir. Then we could see that he was dredging and that he was on my ground.

Ques. Was there a police boat anywhere around?

Ans. No, sir.

Ques. You didn't see any police boat out that day, did you?

Ans. Yes; I seen Mr. Boyle's later in the afternoon.

Ques. At what time?

Ans. Somewhere around half-past one or two o'clock—I can't tell exactly; I didn't keep any account of those things, you know.

Ques. And there was no other craft near you at this time?

Ans. The Carlisle was the nearest boat to us.

Ques. And she was how far?

Ans. About a mile and a half, as near as I could tell.

Ques. Which way was the Carlisle going?

Ans. She was going down.

Ques. She was south of you, was she?

Ans. Yes, sir.

Ques. Was the Carlisle dredging?

48 Ans. I can't answer that question. She was going down, anyway.

Ques. How far could you distinguish the number on your buoy?

Ans. Can't distinguish them far. You have to go close to it.

Ques. How do you mean go close to it?

Ans. Very near alongside of it.

Ques. You have to go right alongside of it to distinguish it, do you not?

Ans. Yes, sir.

Ques. The number was upside down, wasn't it?

Ans. I don't know whether it was or not.

Ques. Have you taken it off since that time?

Ans. No, sir.

Ques. You don't know whether that number was on upside down or not, do you.

Ans. I didn't intend to put it that way.

Ques. Don't you know whether it was upside down or not?

Ans. I can't swear to it, but I think it was right.

Ques. What is your number?

Ans. 137.

Ques. Is that the way is was on?

Ans. (Witness examines number.) Yes; that is the way.
Ques. Is it upside down or not?
Ans. No, sir. Well, the 7 is, but the 3 isn't.
Ques. You never noticed your stakes and markings well enough to know whether the number was on or not?
(No answer heard.)

49 Redirect examination.

By Mr. FITHIAN:

Ques. Now, Mr. Allen, did you ever give any consent to Mr. Lee, or any of these three defendants, to dredge on your ground?
Ans. No, sir.
Ques. Is your ground in Maurice River Cove?
Ans. Yes, sir.
Ques. In this county?
Ans. Yes, sir.
Ques. Were you beating down or sailing toward your ground?
Ans. Beating down to our ground.
Ques. And the Carlisle was where when you got close to your ground?
Ans. The Carlisle was a mile or mile and a half to the southward.
Ques. And how far from your ground was the Carlisle when you saw the Lee dredging on it?
Ans. I should judge a mile and a half, as near as I can tell.
Ques. And were there any other boats near to your ground at that time?
Ans. She was the nearest boat.
Ques. The Carlisle?
Ans. Yes, sir.
Ques. And she was a mile and a half away?
Ans. Yes, sir.

Recross-examination.

By Mr. ACTON:

Ques. How many tacks did you make to get out there that day.
50 Ans. I couldn't tell you. I didn't count them.
Ques. You don't recall, do you?
Ans. No, sir.
Ques. Had you seen Mr. Lee's boat out before that winter?
Ans. No; I don't know as I had, positive.

By Mr. FITHIAN:

Ques. You made your complaint on Saturday, did you not?
Ans. Yes, sir.
Ques. And you were out there on what day?
Ans. On Thursday.
Ques. When does the Oyster Commission meet at their office; what days is the superintendent there?
Ans. He is there pretty much every day, I guess.

Ques. And he lives where?
Ans. Mauricetown, I believe.
Ques. And where is the office?
Ans. Maurice River.

JOSEPH HILTON sworn.

Direct examination.

By Mr. FITHIAN:

Ques. Mr. Hilton, what is your business?
Ans. Oyster business.
Ques. Have you a boat?
Ans. Yes, sir.
Ques. What is your boat's name?
Ans. The Golden Light.
Ques. How long have you owned her?
51 Ans. I should judge about three months; three to six months.
Ques. How long on the 29th of January?
Ans. About two months.
Ques. Where did you get her?
Ans. From Maurice River—from parties up home where I live.
Ques. What are their names?
Ans. Risley.
Ques. Where do they live?
Ans. At Pleasantville.
Ques. On the Atlantic coast?
Ans. Yes, sir.
Ques. You bought the boat of them?
Ans. Yes, sir.
Ques. Did you bring her into Maurice River Cove?
Ans. She was there when I got her.
Ques. Did you oyster in her prior to January 29th?
Ans. No, sir.
Ques. You hadn't oystered in her at all?
Ans. No, sir.
Ques. On January 29th, did you go out in the bay?
Ans. Yes, sir.
Ques. Who did you go with?
Ans. Edward Allen.
Ques. Who was just on the stand?
Ans. Yes, sir.
Ques. Have you got a ground in Maurice River Cove?
Ans. Yes, sir.
Ques. How near is it to Captain Allen's?
Ans. It adjoins him.
Ques. Is there a space between his ground and yours?
Ans. A very small one; yes, sir.
Ques. No. 137 is Captain Allen's, is it not?
Ans. Yes, sir.

52 Ques. Will you please show where yours is?
Ans. Here (indicating).
Ques. How many acres are there in your ground?
Ans. Sixteen, I think.
Ques. You have that ground, have you?
Ans. Yes, sir.
Ques. Have you any oysters planted there?
Ans. Yes, sir.
Ques. Well, did you go down to your ground on the 29th day of January?
Ans. Yes, sir; I went down there to stake up, as I usually have been going for two or three years.
Ques. You usually go every spring, do you?
Ans. Yes, sir.
Ques. Do you renew your stakes in the spring?
Ans. Yes, sir.
Ques. Why?
Ans. Because it is customary for every one to renew his stakes in the spring.
Ques. Do you know Captain Allen's ground when you see it?
Ans. Yes, sir.
Ques. Did you see anybody at work on his ground on that day?
Ans. Yes, sir.
Ques. What were they doing?
Ans. Dredging.
Ques. What do you mean by dredging?
Ans. Catching oysters.
Ques. And how were they doing it?
Ans. By winding and heaving, the same as any one would catch oysters.
Ques. They were on this ground?
Ans. Yes, sir.
Ques. Did you see them wind their dredges?
Ans. Yes, sir.
Ques. Did you see them dumped out?
53 Ans. Yes, sir.
Ques. Did they heave the dredges there?
Ans. Just heaving and winding.
Ques. On Captain Allen's ground?
Ans. Yes, sir.
Ques. Do you know the boat called the Steelman Lee?
Ans. I do.
Ques. What boat was on Captain Allen's ground?
Ans. The Steelman R. Lee, so-called.
Ques. Did you see who was on board of her?
Ans. Steelman Lee himself, Harry Sutton and Frank Lee.
Ques. Did you see them close enough to identify them?
Ans. Yes, sir.
Ques. Do you know whether Captain Lee knew that you owned this boat?
Ans. He told me he didn't.

Ques. When did he tell you so?

Ans. The next Monday morning following.

Ques. What did you do when you saw these people on Captain Allen's ground?

Ans. Well, dinner was ready—it took Allen's appetite, and he said he wouldn't eat any dinner when I asked him. After we had seen them throwing their dredge he went on his ground and got in the yawl, apparently to set stakes.

Ques. Did he stick any stakes in his ground then?

Ans. No, sir.

Ques. What did they do after that?

Ans. Started sailing.

Ques. In what direction?

Ans. Toward Paris Green.

Ques. Did you have oysters on your ground?

Ans. Yes, sir.

Ques. Have you seen Captain Lee since then?

54 Ans. Well, yes; I have seen him since.

Ques. Did you have any conversation with him on the following Monday?

Ans. Yes, sir.

Ques. What was that conversation?

Ans. The following Monday he left home he told me at three o'clock, and came over somewhere around four o'clock.

Ques. He told you he left home at three and came around to you about four?

Ans. Yes, sir. And he said, "Why, I hear you have us arrested?" I said, "Yes." He said, "Captain Joe, I was never there." I said, "You were." Then he began to talk about family affairs and mesmerized me, and I didn't have much to say.

Ques. What do you mean by family matters?

Ans. About what good friends we were and about my brothers, and so on. Some people can talk much nicer than others. I am not a very nice talking man, myself.

Ques. You are not much of a talker?

Ans. No, sir. He mesmerized me anyway. It don't take much to do that little act. He talked very kind to me that morning, and said he didn't know that I had the boat.

Ques. What boat?

Ans. The Golden Light. He told me what a nice boat she was, and all that. That was all right, and he kept on going from one trifling thing to another, the same as anybody that wanted to talk.

Ques. What did he say about the affair of Thursday, the 20th?

Ans. He said that on Thursday, the 29th, he wasn't on the ground. He said he was clearing his center-board.

Ques. Said he was clearing his center-board?

Ans. Yes, sir. He said his center-board was frozen up.

55 Ques. Was it very cold on the 29th?

Ans. It was kind of mild sort of weather. We had been laying up all winter and our boat ran off as soon as she was pushed off.

Ques. Was he freezing his center-board or dredging there when you saw him?

Ans. He was dredging right on that man's ground in there.

Ques. Were there any other boats near that ground?

Ans. None except the Golden Light, the Lee and the Two Bills.

Q. Where were they?

Ans. Down about southeast, or such a matter.

Ques. How far away from your ground were they?

Ans. A mile or mile and a half.

Ques. The nearest boat?

Ans. Yes, sir; the nearest boat.

Ques. Was Allen's ground staked up when you got down there that day?

Ans. Yes, sir.

Ques. And how was it staked?

Ans. Staked up to the corners. It was staked up pretty good for that time of the year.

Ques. What you would call good?

Ans. Yes, sir.

Ques. Were there stakes at each corner?

Ans. Yes, sir.

Ques. Was there a buoy at any corner?

Ans. Yes, sir.

Ques. Was there a marker on any corner?

Ans. Yes, sir.

Ques. Did you take the marker off?

Ans. I was with Allen when he took it off.

Ques. Is that the marker? (witness examines marker).

Ans. Yes, sir.

Ques. How soon did he take it off after Captain Lee had left the ground?

56 Ans. An hour or such a matter—probably an hour.

Ques. Did you take it off while you were on the ground?

Ans. After that.

Ques. Did you take this off after you left the ground or before?

Ans. After we left.

Ques. How did the ground look at that time?

Ans. It didn't look like fresh ground.

Cross-examination.

By Mr. ACTON:

Ques. Did you try it?

Ans. Yes, sir.

Ques. How long had it been since you were on the ground previously?

Ans. I couldn't say. It had been a year since I had been on the ground previously.

Ques. Then you don't know how it looked previously, do you?

Ans. Yes, sir.

Ques. Not for a good many years?

Ans. Yes, sir.
Ques. You weren't mesmerized when you went out to work it, were you?
Ans. Well, when I went to work it I was mesmerized.
Ques. Or paralyzed?
Ans. I was nearly paralyzed.
Ques. You get paralyzed frequently, don't you?
Ans. Not in a case like that.
Ques. Now, Mr. Hilton, you have been friendly with Mr. Lee haven't you?
Ans. Always.
Ques. Like brothers, almost?
Ans. Well, we knew one another.
57 Ques. And haven't you been particularly friendly with him?
Ans. The same as with anybody else, if I meet anybody I am friends with them.
Ques. What time did you leave the river that morning?
Ans. About nine or half past eight or eight o'clock.
Ques. Wasn't it half-past nine?
Ans. I don't think so.
Ques. You don't recall the time?
Ans. No, sir.
Ques. Did you see any other boats going out at the same time?
Ans. I didn't see one, and I was at the wheel.
Ques. Either ahead of you or coming after you?
Ans. No, sir.
Ques. What boats did you see later?
Ans. The Lee and the Two Bills.
Ques. Didn't you see the boat called the Cox?
Ans. No, sir.
Ques. Did you see these boats before or after the dredging?
Ans. When we seen them first it was before the dredging.
Ques. Did the Two Bills dredge?
Ans. No, sir.
Ques. She wasn't dredging?
Ans. No, sir.
Ques. Did you see the dredge thrown overboard from the Lee?
Ans. I could see one dredge hove and wound in from it.
Ques. From the same side?
Ans. No, sir.
Ques. Could you distinguish who held it?
Ans. Frank Sutton and Lee were holding the dredges.
Ques. Who wound them in?
Ans. The whole shooting match.
58 Ques. You saw them all at work there, did you?
Ans. Yes, sir.
Ques. How close were you to them then?
Ans. I should judge a couple or three hundred yards.
Ques. You got within two or three hundred yards of them, did you?

Ans. Yes, sir. I looked at Allen and the tears were running out of his eyes with sorrow. Dinner was ready, but he couldn't eat any dinner. I suppose I would have been the same way, I don't know.

Ques. Tears were running out of his eyes with sorrow and you were commiserating with him?

Ans. I didn't say anything.

Ques. You saw him crying and didn't say anything to him at all?

Ans. No; what is the use? It would only make him worse.

Ques. You didn't offer to wipe his weeping tears away?

Ans. I would if he had asked me to.

Ques. He hadn't you mesmerized to do that?

Ans. Oh, no.

By Mr. FITHIAN:

Ques. Why was Allen worried?

Ans. He had all his wealth there, that was the trouble. He had $900 there.

JAMES BOYLE, sworn.

Direct examination.

By Mr. FITHIAN:

Ques. Captain, are you employed by the State Oyster Commission?

59 Ans. Yes, sir.

Ques. Are you a watchman?

Ans. Yes, sir.

Ques. Do you remember the 29th day of January last?

Ans. I do, sir.

Ques. Were you on a boat that day?

Ans. Yes, sir; on the steamer Cypher.

Ques. And where were you about noon of that day?

Ans. I was down in the lower part of the cove.

Ques. Do you know where—I will point out on the map Section 137 B. Is that it? (Indicates on map.)

Ans. That is it.

Ques. Were you going north or south?

Ans. Southeast, I think, down toward Paris Green Ground.

Ques. Down towards that place? How far or how many miles would you say you were from 137?

Ans. Well, I couldn't tell you how far.

Ques. Well, about how far?

Ans. Perhaps two or three miles or more.

Ques. Did you see Captain Lee on that day?

Ans. Yes, sir.

Ques. On what boat was he?

Ans. On the Steelman R. Lee.

Ques. Who else was on the boat?

Ans. I didn't take notice enough of the others to swear positive, but I talked with Mr. Lee, and I am positive that he was aboard

working. He came to me and asked me if I had been down to his ground at Paris Green since the freeze and how the stakes were. We went and found the ground, together.

Ques. Was that on the 29th day of January?

Ans. Yes, sir.

Ques. And the Paris Green grounds were still below you?

Ans. I think they are pretty near abreast of that (indicating).

60 Ques. When Mr. Lee came to you, was anything said about being in here?

Ans. I think there was; and he said he wanted to go down the Chesapeake.

Ques. Did you own ground anywhere near Captain Allen's?

Ans. Yes, sir.

Ques. Will you please look on the map and show us your ground?

Ans. This ground here, 138, is Sutton's and mine, and this ground here is mine individually (indicating).

Ques. Did you go to Allen's ground on or about the 29th day of January?

Ans. I went there afterwards.

Ques. You went afterwards?

Ans. I couldn't tell exactly when I went there.

Ques. You had been there before the 29th of January, had you?

Ans. I had.

Ques. How soon before that?

Ans. I couldn't tell.

Ques. But you had been there before that time, had you?

Ans. Frequently.

Ques. Did you know anything about the stakes on Allen's ground prior to the 29th day of January?

Ans. I couldn't say positive.

Cross-examination.

By Mr. ACTON:

Ques. Captain, you are the inspector or watchman of these oyster grounds, are you not?

Ans. Well, I am one of them.

Ques. And it is your duty as watchman to go around and protect the various oyster beds belonging to these individual owners, is it not?

61 Ans. Yes, sir.

Ques. It is also your duty to stake out and buoy the various beds, is it not?

Ans. No, sir; not to stake them out and buoy them.

Ques. Not to buoy them?

Ans. No, sir; they do that themselves.

Ques. And they put the markers on themselves?

Ans. Yes, sir.

Ques. Well, had you been out continuously every day previous to January 29th?

Ans. I had been whenever the weather would permit. There are days when no vessel is out, but when able to go out we were out in the steamer, unless detained on account of repairs to the boat, or something like that. There was some pretty rough weather last winter prior to January 29th.

Ques. There was a great deal of ice in the cove, was there?

Ans. Yes, sir.

(Objected to. Objection overruled.)

Ques. Now, will you answer whether or not there was a great deal of ice in Maurice River Cove last winter?

Ans. There was.

Ques. Did the ice in Maurice River Cove last winter interfere with the stakes which were set as markers for the boundaries of the various lots and grounds there?

Ans. Yes, sir.

(Objected to. Objection overruled.)

Ques. Now, the ice did or did not interfere with the stakes last winter which marked the boundaries of these various lots?

62 Ans. Yes; when there is ice it always interferes with them, more or less.

Ques. Was last winter an unusually severe winter in Maurice River Cove with reference to ice?

Ans. Well, it took the stakes away in some localities. It was, perhaps, an average winter, although pretty bad in some parts.

Ques. The ice in Maurice River Cove frequently breaks below and spreads there, doesn't it?

Ans. Yes, sir; sometimes.

Ques. Now, Captain, how close did Mr. Lee come to your boat with his boat on that day?

Ans. Within talking distance.

Ques. Did you see on board his boat?

Ans. I did; yes, sir. I saw him around there, but I didn't examine his boat very closely.

Ques. Well, give us some idea of what you mean by talking to him.

Ans. Well, so that I could understand him and he could understand me.

Ques. Now, can't you tell us how far your boat was from him on that day?

Ans. I don't know just how far; distance looks deceiving on the water. There is nothing more deceiving than the water for distance.

Ques. It requires practice, does it not, to come close to a location on the water?

Ans. It requires practice, of course.

Ques. Now, Captain, can you give us any idea as to how far Captain Lee was from you when he hailed you and asked you to point out his Paris Green lots?

Ans. Perhaps he was just so that he cleared our boat cleverly.

Perhaps he was a little further than across the street. It might not look any further than that, but be further on the water.

Ques. Just so he cleared your boat?

Ans. Yes, sir; cleared my boat.

63 Ques. Was there anything to hinder you from boarding him if you had wanted to?

Ans. No, sir; I could have boarded him.

Ques. Was there anything in his actions that would indicate that he had been stealing $3,000 worth of oysters?

Ans. Didn't talk anything that way.

Ques. Such men usually try to get away from you, don't they, Captain?

Ans. Well, if they have no right there they try to get away from me, but when this occurred I wasn't anywhere near them.

Ques. If it did occur? You don't know that it did occur, do you?

Ans. I didn't see it; no.

Ques. Were the stakes to his Paris Green lots obliterated in any way by the ice?

Ans. They were in shape so that you could find the ground without any trouble. I told Mr. Lee that I had located his ground and found it without any difficulty.

Ques. Had you been anywhere up near the Allen ground to ascertain how the ice had used it?

Ans. I had not.

Ques. So you didn't know about the Allen ground?

Ans. Not at that time.

Ques. Do you know how grounds similarly situated as the Allen ground had been dealt with by the ice that winter?

Ans. Yes, I know.

Ques. Well, had they been dealt with hardly or lightly?

Ans. Some had been dealt with pretty hard and some lightly. The ground varies a good deal, according to how late they have been staked up in the fall.

Ques. Isn't it the custom, Captain, among oystermen in the fall, to go and cut the tops off the stakes?

(Objected to. Objection sustained.)

64 Ques. Now don't answer this question until it is passed upon, Captain. Isn't there a much greater likelihood of the ice tearing out a stake which has not been cut than one which has been?

(Objected to. Objection sustained.)

Mr. ACTON: Now, if the Court please, if it meets with the approval of counsel for the State and with the sanction of the Court, in order to save time I would like to ask Captain Boyle a question and for the purpose of asking that question will make him my witness, if you do not object.

Mr. FITHIAN: I don't think I have any objection to your making him your own witness.

Mr. ACTON: Shall I do it now or later?

Mr. FITHIAN: I have no objection. You may put the question at this time.

Ques. Captain, on the Monday following the 29th day of January, did you or did you not go out with Mr. Lee to inspect his ground, which is located alongside or close to this ground upon which this alleged trespass took place?

Ans. I didn't go out with him. I saw him later on.

Ques. What conversation, if any, did you have relative to that ground? You say that ground was marked. Can you point out on the map the location of that ground?

(Objected to.)

The COURT: When was that?

Mr. ACTON: The following morning. My object in asking
65 this question is to show that on the 29th day of January Captain Lee went out and was marking his ground, which he did. He marked them with sacks on stakes and so on, and when he heard that he had been charged with being on his neighbor's ground he went at once to the nearest officer of that locality and asked him to come out there to verify his markings, as the ice had carried away nearly all of the stakes in that vicinity that winter. He thought that there might be some mistake in his marking of the ground which he had marked the previous Thursday, and he asked the Captain to come out and verify these markings. It seems to me that the fact that just as soon as he knew he was charged with this offence he took the very first opportunity to verify what he had done, this complaint having been made on Saturday, makes it really a part of the *res gestae* of this case.

Mr. FITHIAN: Now, if your Honor please, certainly what took place on Monday, which is after this alleged offence took place, is not a part of the *res gestae* in this case, and I am surprised that counsel would argue that to the Court. Now, if he is innocent, it matters not how long an interval of time elapsed between Thursday and the time when Mr. Lee, the defendant, went out with Captain Boyle. Perhaps Captain Boyle can testify in this case the condition in which he found Lee's ground on the Monday following, but he cannot testify to what Mr. Lee said to him.

The COURT: I think there is force in the prosecutor's objection. I think that Mr. Acton should be permitted to show subsequent conditions, conditions on the following Monday, but I do not think that Mr. Acton should be permitted to prove declarations made by the defendant on the following Monday.

66 Mr. ACTON: By virtue of what was said to him, what was done.

The COURT: You may prove what was done.

Ques. What did you do on the following Monday with Captain Lee, if anything, with reference to his ground or ground which he claimed?

Ans. He beckoned to me——

Mr. FITHIAN: Don't tell what he said to you.

Ques. You can say what he said by reason of what you said.

Ans. Well; I went alongside of him, alongside of Mr. Lee—and I am not allowed to say what he asked me; is that it?

Ques. You may say what you did by reason of what he asked you.

The COURT: What did you do that following Monday morning?

Ans. Well, I went alongside of his boat——

Ques. Well, did you go out to the grounds?

Ans. He was already on this ground, next to this Allen ground, at this time.

Ques. What ground was next to the Allen ground?

Ans. This was Mr. Lee's ground (indicating) next to the Allen ground.

Ques. They were two grounds right on the bay together, were they?

Ans. No, sir.

Ques. How long a distance was there between the two grounds?

Ans. There was room for a large ground, I suppose.

Ques. Did you notice any markings there?

67 Ans. On this ground?

Ques. Yes.

Ans. I noticed markings on both grounds.

Ques. Were they fresh?

Ans. Well, yes; these markings on Lee's ground looked to be fresh.

Ques. Well, Allen has already testified that he marked his ground that same day.

Ans. Well, Mr. Lee's ground was marked with what looked like a piece of old sacking at what I call the southeast corner of it and Mr. Allen had a buoy in the northern or northwest corner, which had been there for quite awhile, this buoy had. They had never been marked exactly alike.

By Mr. FITHIAN:

Ques. You say that the buoy had been on Allen's ground for some time?

Ans. Yes, sir.

Ques. Any buoy on these grounds? (Indicating.)

Ans. No, sir.

Ques. How long has Mr. Lee been an oysterman?

Ans. I can't say.

Ques. How long have you known him to be an oysterman?

Ans. Ever since he was a boy.

Ques. Did you know the condition of these grounds prior to the 29th?

Ans. Yes, sir.

Ques. And prior to the 29th was there any difficulty for a practical oysterman to distinguish between these two grounds?

Ans. No, sir; not at all.

Ques. No difficulty at all?

Ans. No, sir. Whenever I have been there the grounds were so they could be distinguished.

68 Ques. One had buoy and the other had not; is that right?
Ans. Yes; one had a buoy and the other had not.
Ques. And one was a larger ground than the other?
Ans. Yes; one was considerably larger than the other.
Ques. And you have a ground adjoining Allen's, have you not?
Ans. Yes, sir.
Ques. Have you any oysters on that ground?
Ans. No, sir.
Ques. Have you any oysters on other ground?
Ans. Yes, sir.
Ques. Were they disturbed by the ice?
Ans. I don't think they were.
Ques. When was it you went down there with Lee?
Ans. I didn't go down there with him. He was on his ground.
Ques. Well, what day was it that you went down with Lee, or when Lee was there?
Ans. The first Monday after this occurred, I think.
Ques. The first Monday after this occurred?
Ans. I think so. I wouldn't like to swear to dates unless I had them down, but at any rate soon after this occurred.

By Mr. ACTON:

Ques. Captain, when do you remember being on the Allen ground prior to the 29th day of January?
Ans. I passed by there frequently.
Ques. I didn't ask you that. I ask to fix a time when you had been there and noticed that buoy.
Ans. I noticed that buoy every time that I passed by there.
Ques. Well, I ask you to fix a time when you definitely remember that buoy being in this location prior to the 29th day of January.
69 Ans. I can't fix no date when it hadn't been there.
Ques. You can't fix any time?
Ans. No, sir.
Ques. No time since it hadn't been there?
Ans. No, sir.
Ques. I want to ask you this question: Can you fix in your mind any one time that you remember that buoy was there?
Ans. Every time that I went by there.
Ques. That is no answer.
Ans. That is the best I can do. I was up there Saturday a week before that and noticed this buoy perfectly, or two months before this and noticed this buoy.
Ques. Do you go there every day?
Ans. No, sir; the ice won't let me; but every time I go up there I see this buoy.
Ques. Then you don't know but what this buoy was taken up and replaced by some one else?
Ans. It was the same buoy, anyhow, for I know the top has been broken off by the ice, or some one running over it. His private mark was on it different from the general run of marks.

Recess to 2 P. M.

Trial of the cause resumed at 2 P. M.

ALONZO T. BACON, sworn.

Direct examination.

By Mr. FITHIAN:

Ques. Captain, are you superintendent of the State Oyster Commission?

70 Ans. I am.

Ques. Did you make the complaint against Mr. Lee?

Ans. I did.

Ques. And when did you make it?

Ans. On the 4th of February last.

Cross-examination.

By Mr. ACTON:

Ques. Do you know the complaint you made against him?

Ans. It was made on information.

Ques. From whom?

Ans. Joseph Hilton and Edward Allen.

Ques. Did you make a charge of larceny in that complaint?

Ans. Well, charged that this man was dredging on his oyster grounds.

State rests.

71 *Defendants' Testimony.*

JAMES BOYLE, recalled.

Direct examination.

By Mr. ACTON:

Ques. You have stated in your direct examination that on the 29th day of January you were at the oyster beds in conformity with your duty, have you not?

Ans. Yes, sir.

Ques. And you saw Captain Lee on that day?

Ans. Yes, sir.

Ques. And you stated in your direct examination that you had been out on the oyster beds practically every day, did you not; that is, every day prior to that time that the weather was suitable for you to go?

Ans. Yes, sir.

Ques. Had you seen Captain Lee out there that winter before that day?

Ans. Not since the freeze, not since the clearing up of the ice that winter.

Ques. Not since the freeze-up?

Ans. No, sir.

Ques. Can't you recall, Captain, when you did see him at the time of the freeze-up?

Ans. I don't know that I can.

Ques. Can you approximately; had you seen him there since the early part of the previous winter?

Ans. No; I hadn't.

Ques. Sometime in the latter part of November or December?

Ans. I don't remember just when.

Ques. And you hadn't seen him or his boat there from the first freeze?

72 Ans. No, sir.

Ques. Athough you had been patrolling the oyster beds every day practically that the weather permitted. Now, did you or did you not see Captain Lee dredging on his Paris Green lot?

Ans. Yes, sir; saw the boat going through the manœuvres of dredging on his Paris Green lot.

Ques. That is not on the lot in question?

Ans. No, sir; where we came to stake up.

Ques. Where he asked you to locate the ground?

Ans. Down there I saw them going through the manœuvres of dredging, and that is all to it.

Cross-examination.

By Mr. FITHIAN:

Ques. What time was that, the 29th day of January?

Ans. Yes; the 29th of January.

Ques. Now, Captain, the freeze didn't take place until the first of the year, did it, after Christmas?

Ans. I can't say. I could say if I looked over my log.

Ques. And in patrolling the cove you patrolled only the southern section, or all of it?

Ans. The southern section, below East Point.

Ques. From East Point to Maurice River?

Ans. From East Point to Cape Shore.

Ques. How far is East Point below Captain Allen's ground, would you say?

Ans. Captain Allen's ground is below East Point.

Ques. How big a section is it that you patrol?

Ans. Oh, it covers several miles; I couldn't just exactly tell; could guess at it, perhaps, some six by eight miles.

Ques. Six by eight miles?

Ans. Probably so.

73 Ques. Could it be possible for Captain Lee and you to both be up there and you not see him?

Ans. Oh, yes; it might be.

Ques. It might easily be, might it not?

Ans. It might be, but he couldn't be there a great while. In fact, from the first freeze-up till Mr. Lee came out there were not many days that Mr. Lee could get there for ice, but as soon as the ice cleared away the Captain came out to locate his grounds, as is the custom, and put down stakes.

URIAH S. LEE, sworn.

Direct examination.

By Mr. POTTER:

Ques. Captain Lee, where do you live?
Ans. At Leesburg.
Ques. How old are you?
Ans. Going on fifty-seven years old.
Ques. What kind of business are you in?
Ans. The oyster business.
Ques. How long have you been in the oyster business?
Ans. Since I was nine years old. I have had charge of a vessel since I was eighteen.
Ques. Do you know a vessel by the name of the Steelman R. Lee, Jr.?
Ans. Yes, sir.
Ques. Were you on board of her on the 29th day of January last?
Ans. I was.
Ques. Whereabouts were you?
Ans. Well, about 11 o'clock I left Maurice River.
74 Ques. Who else was on board?
Ans[illegible]son Frank and Captain Sutton.
Ques. Har[illegible]sutton?
Ans. Yes, sir.
Ques. The other two defendants named in this indictment?
Ans. Yes, sir.
Ques. Where were you going?
Ans. Going to stake up oyster grounds.
Ques. Where?
Ans. All over. Riggins' Ditch and Paris Green.
Ques. How many oyster grounds do you own in the cove?
Ans. Twelve or fifteen different ones, with beds that I am interested in.
Ques. Which was the first ground which you reached?
Ans. Riggins' Ditch ground, the first ground that I ever had; have had it over twenty-five years.
Ques. Do you know what the number and section of this Riggins' Ditch ground is?
Ans. Well, I couldn't right now; my boy generally attends to my business most of the time.
Ques. Is this your deed for that ground? (Paper shown witness.)
Ans. Yes, sir; and several others, some seven or eight.
Ques. Captain, can you point out on the map the location of them?
Ans. I don't know as I could. I can't tell—have four sections there, a very large ground.
Ques. How many acres in this ground?
Ans. I think about thirteen, or didn't you look?
Ques. Well, now, Captain, how did you know when you reached this ground?

Ans. Well, my son was steering and Captain Sutton and me were eating dinner. When I got on deck he said, "Pop, I think these are our grounds." I went on deck and seen it was. Had a little
75 black stake, all that showed on the ground, no other stakes on the ground when we found it.

Ques. Was your marker there?

Ans. No, sir; only one little stake was there.

Ques. And that is how you identified the grounds?

Ans. Yes, sir.

Ques. How long did you stay there?

Ans. About fifteen or twenty minutes.

Ques. Did you do any staking?

Ans. My son did; I didn't. I didn't get off the boat.

Ques. Where was Sutton?

Ans. Sutton and my son both did the staking, went out in the yawl boat.

Ques. How many stakes did they put up?

Ans. Four, I think.

Ques. Did you have any dredges on board?

Ans. Yes, sir; two.

Ques. Where were they?

Ans. On the forward hatch on deck.

Ques. Were they in a condition to use?

Ans. No, sir. We used them to catch a mess of oysters to go home with.

Ques. What was the matter with them?

Ans. All to pieces.

Ques. Well, did you put these dredges or either of them overboard?

Ans. No.

Ques. Did you take any oysters from that ground?

Ans. No, sir; haven't dredged there until over two years; until Captain Boyle was there.

Ques. Do you know Captain Allen's ground when you see it?

Ans. No, sir.

Ques. Do you know where it is?

Ans. Never seen him there, but saw the Golden Light once.

Ques. When was that?

76 Ans. This spring, the Monday following, on Monday.

Ques. Did you see the Golden Light on January 29th?

Ans. Not to know her.

Ques. Were there any other vessels of any description with you while you were on this section 28?

Ans. Yes; the William B. Carlisle and the Elmira Cox.

Ques. How close was the Carlisle—sometimes called the Two Bills?

Ans. We was all the way, so we could talk to them.

Ques. You say you were so close you could conveniently talk?

Ans. Yes, sir.

Ques. Well, did you talk?

Ans. Yes, sir; was plaguing the cook all the time. I was plaguing the captain, too.

Ques. How far was the Elmira Cox away from you?

Ans. Maybe half a mile.

Ques. Well, whom did you see; you said you didn't see the Golden Light to recognize her; did you see any other vessel within two miles of her?

Ans. I saw a sloop which I think belongs to a man by the name of Erricson.

Ques. How far away was that sloop?

Ans. A mile or mile and a half, about.

Ques. Did she get any closer to you than that?

Ans. No, sir; that was the last I saw of her.

Ques. Did anybody from this sloop, which you are not sure of, hail you?

Ans. No, sir.

Ques. There was no calling or hailing from this sloop?

Ans. No, sir.

Ques. Was there any hailing from the Elmira Cox?

Ans. No.

Ques. Well, you said you remained there about fifteen minutes. Where did you go after that?

77 Ans. Down to Captain Boyle's, down to Paris Green.

Ques. Did the Carlisle go down, too?

Ans. Yes; I went down to see Captain Boyle and he got down practically at the same time. Yes; we went down together; caught up with him after putting in these stakes.

Ques. When you got down to what you call the Paris Green ground, did you put your dredges overboard?

Ans. No, sir; not till we staked up our ground?

Ques. You did then?

Ans. Yes, sir; to catch some to take home with us.

Ques. And that was the only time that day in Maurice River Cove that you had your dredges overboard?

Ans. Yes, sir.

Ques. And those were your own grounds?

Ans. Yes, sir.

Ques. Did you have any conversation before putting the dredges there or do any staking with Captain Boyle?

Ans. No; I only just asked Captain Boyle if he would please see my ground, that I had to go away Monday.

Ques. You told him you would be away Monday?

Ans. Yes, sir; I was going to James River the first day of February.

Ques. Do you deal heavily in Chesapeake oysters?

Ans. Yes, sir.

Ques. Have you oysters planted there?

Ans. Yes, sir.

Ques. After you got these three baskets of oysters, what did you do?

Ans. Went right home. We ran ashore that night; it was very foggy.

Ques. Where did you go ashore?

Ans. At Leesburg.

Ques. Captain, is there a center-board on your boat?

78 Ans. Yes, sir.

Ques. Was it in working condition on that day?

Ans. My son there was going down——

Ques. I say, was the center-board in working condition?

Ans. No; it was frozen up.

Ques. Was it frozen up when you went out here to stake up this ground (indicating)?

Ans. Yes, sir.

Ques. Was any attempt made in any manner to break the ice, so that the board would go down?

Ans. Yes; we had been working at it a long while, and had an iron bolt about six feet long—a good deal like a chisel—and ran that alongside the well to get the board down.

Ques. You put it alongside of the center-board?

Ans. Yes, sir.

Ques. Was it put down?

Ans. My boy put it down.

Ques. Did you see him do it?

Ans. Yes, sir.

Ques. How long had it taken to get this board down?

Ans. Well, from the morning until 1 or 2 o'clock in the afternoon. We commenced in the morning at 7 o'clock to get it down.

Ques. And you were doing this while you were on the upper ground?

Ans. All the time we were going down, and when we commenced to stop at the ground, all the time to make the boat work. We wanted to get back home, and a boat doesn't work well without its center-board.

Ques. Now, that is your ground, Captain, there (indicating No. 28). Now, in coming out here, did you come out directly to this point or down here to the bay with the wind?

Ans. Came down with the wind.

79 Ques. Did you go to the southward of your ground at all?

Ans. Went down to the lower section; two sections there we have.

Ques. Now, this is north and this is southwest and west. Did you go down below your grounds at all and come up with the wind; the wind from the southeast as testified to?

Ans. We came in across this way (indicating), right across the ground.

Ques. You didn't go there in that direction to the southwest of your ground, did you?

Ans. No; only the corner of the ground, the southeast corner of the ground.

It is admitted that the defendant, Uriah S. Lee, has a lease from the State Oyster Commission for ground No. 28, Section B. Also for 199, Section A, commonly known as Paris Green.

Cross-examination.

By Mr. FITHIAN:

Ques. Where did you leave on the morning of the 29th of January?

Ans. Left Maurice River.

Ques. Where were you anchored?

Ans. Anchored near Leesburg.

Ques. Anchored there all night?

Ans. No; had to go with the tide.

Ques. When did you leave Leesburg?

Ans. That afternoon.

Ques. Where were you on the 28th, the day before the 29th?

Ans. At home.

Ques. Where were you on the 27th.

80 Ans. I wasn't away from home only once before Christmas until that day; all the time that I had been away from home before Christmas.

Ques. And on the 28th you went down to the mouth of Maurice River?

Ans. Went down sometime that night.

Ques. For the purpose you say of staking up?

Ans. Yes, sir.

Ques. And did you have dredges aboard?

Ans. Yes; I had.

Ques. And why did you have your dredges aboard?

Ans. Why, I was going to take them to a blacksmith named Shropshire to be fixed.

Ques. Where?

Ans. Long Reach.

Ques. And you left, then, on the morning of the 29th?

Ans. Yes, sir.

Ques. What time did you get out there?

Ans. I suppose in the neighborhood of 2 o'clock in the morning.

Ques. And what time did you hoist your anchor and start out of the cove?

Ans. Left there sometime between 9 o'clock and 10 o'clock. It was coming full tide then.

Ques. It was full tide? What time had it taken to run up?

Ans. I couldn't tell you what time the tide ran up.

Ques. You say that the tide when you started out in the morning was at high water, do you not?

Ans. It was high water at that time; yes, sir.

Ques. Had the tide begun to run down on that day before you started out there?

Ans. We started away as soon as the fog cleared, then we went out.

Ques. At what time did you leave Leesburg, in the morning or in the night?

Ans. I suppose around 2 o'clock, between 2 and 3 o'clock.

81 Ques. In the morning?

Ans. In the morning.

Ques. You saw the tide then, did you not?
Ans. It was up tide then.
Ques. The tide was up when you left Leesburg, was it?
Ans. Yes, sir.
Ques. At 2 or 3 o'clock?
Ans. Yes, sir.
Ques. And high water at 9 o'clock?
Ans. I don't know exactly when it was high water, but we went out on account of the fog.
Ques. What time did you get back that night?
Ans. Sometime in the afternoon. It was foggy and there were eight or nine of us along the shore together.
Ques. When did you go to Long Ridge?
Ans. The next morning.
Ques. Where did you leave the dredges?
Ans. At Long Reach.
Ques. Well, that same day?
Ans. No.
Ques. Did you come back again and leave the dredges there?
Ans. No, the next day; couldn't get back that day.
Ques. Then you didn't leave the dredges there until the 31st of January, did you?
Ans. Left there on Friday, the next day after this man said she was in the cove.
Ques. Well, on Thursday night where were you?
Ans. On shore.
Ques. When did you come off?
Ans. That night at high water.
Ques. At what time?
Ans. Sometime in the night, I don't know exactly when it was, but sometime in the night.
Ques. Where did you run then?
Ans. We came in the river and anchored?
82 Ques. Where did you anchor?
Ans. Alder Point.
Ques. When did you get under way?
Ans. The next morning.
Ques. You say it was 7 or 8 o'clock, after sun rise, that you stopped at Long Reach?
Ans. Yes; left the dredges there; where we left the dredges.
Ques. Where did you leave the dredges?
Ans. At the blacksmith shop.
Ques. Whose shop?
Ans. Mr. Shropshire's.
Ques. At Long Reach?
Ans. Yes, sir.
Ques. And you say about 9 o'clock in the morning?
Ans. Yes, sir.
Ques. The Elmira Cox and the Carlisle were there over night. were they?
Ans. Yes, sir; all night.

Ques. Who is the captain of the Elmira Cox?
Ans. Why, Mr. Cox.
Ques. Who is the captain of the Carlisle?
Ans. John Sharpless.
Ques. Do you know him well?
Ans. Yes; he married my daughter.
Ques. He is related to you, is he?
Ans. Yes; married my daughter.
Ques. He is your son-in-law then?
Ans. Yes, sir.
Ques. Where is his ground?
Ans. He has got ground below us.
Ques. Where is Captain Cox's ground?
Ans. Off there a little piece.
Ques. How far from your ground?
Ans. It might be a quarter of a mile, something like that.
Ques. In what direction from you?
83 Ans. Right abreast of me.
Ques. In which direction?
Ans. Southwest.
Ques. Do you know the number of it?
Ans. No, sir; I don't know it.
Ques. Who was the captain aboard the Cox?
Ans. Why, Birney Cox.
Ques. Where is his ground?
Ans. Just off short of us.
Ques. On what boat was he?
Ans. Captain of the Elmira Cox.
Ques. Who else was on board of the Elmira Cox?
Ans. Captain Frazier Wilden.
Ques. Where is his ground?
Ans. Right there (indicating), and adjoins, I guess, Captain Cox's.
Ques. What were they doing there?
Ans. Staking up their ground, as we were.
Ques. How were their centerboards?
Ans. I don't know anything about their business.
Ques. How was the wind when you came down that morning?
Ans. Had the wind to the southward.
Ques. The wind was to the southward?
Ans. Yes, sir.
Ques. Did you beat out or not?
Ans. Yes, sir.
Ques. Why?
Ans. Because of a head wind.
Ques. Didn't you run down there? (Indicating.)
Ans. No, sir; beat down the shore.
Ques. Where were the Cox and the Sharpless?
Ans. They were with us.
Ques. All of the time?
Ans. Why, I could talk to them all the time if I wanted to.

Ques. They were escorting you down there, were they?

84 Ans. They had business there the same as I had.

Ques. What time did you get on your ground?

Ans. Sometime after dinner; I suppose between 12 and 1 o'clock when I got to my ground.

Ques. How long did you stop there?

Ans. I was there about fifteen minutes,—long enough to stick four stakes.

Ques. Did you tie these sacks to the stakes?

Ans. Yes.

Ques. Why did you do that?

Ans. So that I could see it.

Ques. Then where did you go?

Ans. Then we went to what is called the Paris Green Ground. Had a vessel waiting for me to come for a load of oysters laying down to Hampton waiting for me to come aboard of her. That is why I had to stake my ground up.

Ques. And you went on down to the Paris Green Ground?

Ans. Yes, sir; that is where I went.

Ques. And you staked your ground?

Ans. Yes, sir.

Ques. When did you expect to go away?

Ans. I was going away on Monday morning; that was my intention to go then.

Ques. Did the Carlisle and Elmira Cox go down to the Paris Green Beds with you?

Ans. The Carlisle did; the Cox went to her own grounds.

Ques. How close was the Cox when you went there?

Ans. She was some distance away down at her own ground.

Ques. Was the Carlisle with you?

Ans. Yes, sir.

Ques. How close was she to you?

Ans. Right near all the time; the same both coming and going.

85 Ques. When did you go to Hampton?

Ans. I expected to go on Monday.

Ques. Why didn't you go?

Ans. My son came home and said that a man by the name of Allen and some other man said I had been working on their ground.

Ques. What night was that?

Ans. Saturday night.

Ques. Captain, why did you tell Captain Hilton and Captain Allen that you were not stealing on his ground, but simply trying to free your centerboard, that they were mistaken when they said that?

Ans. Because there was not a word of truth in it.

Ques. Did you go to him?

Ans. Yes, sir; like a man and I said, "Mr. Hilton, did you say that I was on that man's ground?" and he wouldn't say yes or no. I told him he might as well tell me as I had come down to see him.

Ques. Didn't you tell him that you were trying to free your centerboard?

Ans. No, sir; I told him my board was frozen up.
Ques. Didn't you tell him that that was what you were doing on Allen's ground?
Ans. No, sir; nothing about his ground; didn't know he had a ground there.
Ques. Do you know Hilton's boat?
Ans. Yes, sir.
Ques. How long have you known her?
Ans. Ever since she was a boat?
Ques. When did he buy his boat?
Ans. Sometime late in the fall.
Ques. Did you know when he bought it?
Ans. Yes, sir; I know all about her.
Ques. Who had her before he had her?
Ans. A man by the name of Risley.
Ques. Did you know that Hilton had the ground in that neighborhood?
86 Ans. Yes, sir.
Ques. But you didn't know that Allen had a ground there?
Ans. No, sir; never knew there was such a man.

Re-direct examination.

By Mr. POTTER:

Ques. Captain, how long had it been since you have worked in this upper ground?
Ans. Well, I have planted about two loads of Chesapeakes there every year.
Ques. Have you dredged any on it?
Ans. No, sir; my son has.
Ques. How long has it been since you have personally dredged there?
Ans. Over three years, I suppose.
Ques. Captain, what kind of a day was it early on January 29th?
Ans. It was pretty foggy.
Ques. When did it clear away?
Ans. About 9 o'clock in the morning.
Ques. Was it perfectly clear?
Ans. It rained a little.
Ques. About what time?
Ans. I suppose about somewhere between 10 and 11 o'clock.
Ques. When did the fog set in again?
Ans. Along about 3 o'clock in the afternoon.

87 FRANK B. LEE, sworn.

Direct examination.

By Mr. POTTER:

Ques. Mr. Lee, where do you live?
Ans. Leesburg.
Ques. How old are you?

Ans. Twenty-five years old.
Ques. What is your business?
Ans. Oysterman.
Ques. How long have you been oystering?
Ans. About four years and a half for myself and that long on shares with my father.
Ques. How long have you been oystering in Maurice River Cove—not for yourself, but altogether?
Ans. Ever since I was about sixteen.
Ques. Where were you on the 29th day of January last?
Ans. I was aboard the Steelman R. Lee.
Ques. Are you the captain of that vessel?
Ans. Yes, sir.
Ques. To whom does it belong?
Ans. My father.
Ques. Where did you go on the Steelman R. Lee?
Ans. Went out in the cove to stake up our ground.
Ques. Who was at the wheel going out?
Ans. I had the boat.
Ques. Why did you have it?
Ans. Because I am well acquainted down there. He is not down there as much as I am. My oysters are down there and I was down there working.
Ques. How do you find your grounds, this section, No. 28?
Ans. Well, I am acquainted with the locality and know
88 where it is, and have a range down there consisting of a clump of woods and a white house on the edge of it.
Ques. Can you point out where that is on the chart?
Ans. I believe so. I think my grounds would be about where that range is. (Indicating on map.) There is a big clump of woods right here.
Ques. Is that where the white house is?
Ans. No; below the white house. I only say that the white house runs right across the ground.
Ques. Can you point out where your grounds are there?
Ans. I am not very well acquainted with the map, but I can find the cove there.
Ques. Run a line with your finger.
Ans. This looks very much like mine (indicating). Mine is 136, so that must be por-
Ques. Now, you came right down on this range from Riggins' Ditch, did you not, to your ground?
Ans. We came down until we saw that white house, and then we stood off and ran over the ground.
Ques. Did you do that all on one tack?
Ans. No; made several tacks.
Ques. Did you go to the west and south of your ground any distance?
Ans. No, sir.
Ques. When you reached your ground, was there any other vessel or vessels near you?

Ans. No; not right close, only the William Carlisle, the schooner boat, went right close to her.

Ques. What one?

Ans. The William Carlisle.

Ques. The one they call the Two Bills.

Ans. Yes, sir.

Ques. How close was she?

Ans. Within talking distance.

Ques. All the time you were there?

Ans. Yes, sir.

89 Ques. Who was on board the Two Bills?

Ans. John Sharpless, Captain Sam Lee and John Chance; all three captains.

Ques. Were there any dredges on board?

Ans. Yes, sir.

Ques. To whom did they belong?

Ans. To my father--but too big for my boat.

Ques. Could they have been worked from the Steelman R. Lee?

Ans. Well, they could have been, but it would have been hard work, for they were too large for her.

Ques. Were those dredges, on the 29th day of January, ready to be used?

Ans. No, sir.

Ques. What was the matter with them?

Ans. Well, they were out of shape and not fit to be used.

Ques. Were their lines bent?

Ans. No, sir.

Ques. On that day, the 29th day of January last, while on your ground, or in the vicinity of your grounds, or your father's grounds, did you put the dredges which were on board into the water?

Ans. No, sir.

Ques. Did you take any oysters?

Ans. Not there.

Ques. What did you do there?

Ans. We stuck four stakes, me and Sutton—had one tall stake.

Ques. Were you on the lot of Edward Allen?

Ans. No, sir.

Ques. On the 29th day of January?

Ans. No, sir.

Ques. Did you dredge there?

Ans. No, sir.

Ques. How many stakes did you say you put up?

90 Ans. Four, I think. One stake was a big, long one, and showed two miles or further.

Ques. Was the Two Bills there during the entire time you were there?

Ans. Yes, sir.

Ques. Did you come out in the river together?

Ans. Yes, sir.

Ques. Did you come out with the Elmira Cox, or about the same time?

Ans. I didn't see her when she came out.
Ques. Had she gone before you?
Ans. I couldn't say positive, but she was not far off.
Ques. Well, in this vicinity, how far was the Elmira Cox away?
Ans. Well, I couldn't say—about a quarter of a mile or further.
Ques. Did you see a sloop?
Ans. Yes, sir.
Ques. How near at any time did this sloop get to you?
Ans. A mile or a mile and a half at the furthest.
Ques. Never got any closer while you were there?
Ans. No, sir.
Ques. Did you know what sloop it was?
Ans. Didn't at that time; no, sir.
Ques. Did anybody hail you from that sloop?
Ans. No, indeed; wasn't close enough.
Ques. Did it rain on that day?
Ans. A little.
Ques. Was it a clear, bright sunshiny day?
Ans. No, sir; it was foggy in the morning.
Ques. When did the fog lift?
Ans. Sometime in the middle of the forenoon, 9 or 10 o'clock.
Ques. When did it set in again?
Ans. About 3 o'clock.
Ques. What were you going to do with those dredges which you had on board?
91 Ans. Going to have them fixed up.
Ques. Where were you going to leave them?
Ans. At Shropshire's.
Ques. Where is that?
Ans. At Long Reach. He is a blacksmith.
Ques. How long were you on this ground of your father?
Ans. About fifteen or twenty minutes.
Ques. Where did you go then?
Ans. To Paris Green.
Ques. What became of the Two Bills?
Ans. She went down with us.
Ques. You kept together, did you?
Ans. Yes, sir; pretty close.
Ques. What did you do when you got up to Paris Green?
Ans. Saw Captain Boyle there and waved for him to come close to us.
Ques. What did you want of him?
Ans. To show us where our ground was.
Ques. Did he do it?
Ans. Yes, sir.
Ques. He located your ground for you, did he?
Ans. Yes, sir.
Ques. Did you dredge there?
Ans. We stuck stakes in each corner first and then dredged.
Ques. Did you get some oysters?
Ans. Yes, sir.

Ques. Then what did you do?
Ans. Went home.
Ques. You say that at no time did you go to the southwest of Section 28?
Ans. No, sir.
Ques. Do you know Edward Allen's grounds, where they are?
Ans. No, sir; I know where Hilton's is.
92 Ques. You know where Hilton's is?
Ans. Yes, sir.
Ques. Do you know Edward Allen?
Ans. I am not acquainted with him, but I know him by sight.
Ques. You know him by sight?
Ans. Yes, sir.
Ques. No such man had ground near you, had he?
Ans. No, sir; not right close.

No cross-examination.

HARRY SUTTON, sworn.

Direct examination.

By Mr. POTTER:

Ques. Mr. Sutton, where do you live?
Ans. Leesburg.
Ques. What is your business?
Ans. Oysterman.
Ques. How long have you been an oysterman?
Ans. About thirteen years.
Ques. During that time have you worked on the grounds in Maurice River Cove?
Ans. Yes, sir.
Ques. Have you been at work for yourself or for somebody else?
Ans. Somebody else, the majority of it.
Ques. Have you ever worked for either Frank Lee or Steel Lee?
Ans. Yes, sir; both of them.
Ques. Were you on the Steelman R. Lee on the 29th day of January last?
93 Ans. I was.
Ques. Where was the Steelman R. Lee on that day in January?
Ans. In Maurice River Cove.
Ques. Whereabouts?
Ans. Well, two different places.
Ques. What was the first place after you came out of the river?
Ans. Riggins' Ditch.
Ques. On whose ground?
Ans. Captain Lee's ground.
Ques. Do you know those grounds yourself?
Ans. I do.
Ques. Had you ever worked on them before
Ans. I had.

Ques. What were you doing there that day?
Ans. Digging stakes and staking up, Frank and I.
Ques. How many stakes did you put there?
Ans. I would say about three or four is all. I am not positive how many.
Ques. Did you have any marks on them?
Ans. We did.
Ques. What were they?
Ans. Tied sacks on them.
Ques. Do you know Edward Allen?
Ans. Only by sight.
Ques. On the 29th day of January last, did you know that Edward Allen had an oyster ground near Captain Lee's ground?
And. I did not.
Ques. Did you ever see him out there?
Ans. No, sir.
Ques. Before that day?
Ans. No, sir; never knew him before that day.
Ques. Were you on any other grounds than those of Captain Lee on the 29th day of January last?
Ans. I was not.
94 Ques. Were there dredges aboard of Captain Lee's boat?
Ans. Yes, sir.
Ques. Did you put then in the water at that place? (Indicating.)
Ans. No; not there.
Ques. Where did you go after leaving the upper ground?
Ans. To Paris Green.
Ques. Did you dredge there?
Ans. Caught three baskets of oysters.
Ques. When you got to Paris Green, how did you know that you were on the Paris Green Ground?
Ans. By the captain's watch-boat telling us it was there.
Ques. Well, at this upper ground were there any other vessels near you?
Ans. Yes, sir.
Ques. What one?
Ans. The Two Bills.
Ques. How near was she?
Ans. We was talking to her.
Ques. Was she there during the entire time you were there?
Ans. They was.
Ques. Within hailing distance?
Ans. Yes, sir.
Ques. What were they doing?
Ans. They were *in* Captain Sam Lee's ground near there, trying to locate that and stake it up.
Ques. If you or any one else had put a dredge into the water, could the men on the Two Bills have seen it?
Ans. Couldn't help seeing it.
Ques. Were you on Edward Allen's ground on the 29th day of January?

Ans. Not that I know of.

Ques. You didn't dredge on Edward Allen's ground?

95 Ans. No, sir; didn't heave a dredge there.

Ques. Were dredges put overboard at any place other th[illegible] the Paris Green Ground?

Ans. No, sir.

Ques. What kind of a day was it?

Ans. It was a very cloudy day.

Ques. Did it rain?

Ans. A little; yes. It sprinkled a little, not to any extent.

Ques. Are you any relation to the Lees?

Ans. No, sir.

Ques. Are you working for them now?

Ans. No, sir.

Ques. What are you doing now?

Ans. Working for a man by the name of Bateman, of Port Norris.

Ques. Are you in charge of an oyster schooner?

Ans. Yes, sir.

Ques. Do you know the Golden Light, a sloop, when you see it?

Ans. Yes, sir.

Ques. Did you see the Golden Light on the 29th day of January?

Ans. Not to recognize her.

Ques. Did you see a sloop?

Ans. Yes, sir.

Ques. How far away was she?

Ans. Near to East Point, when she left the ground. I suppose a mile or mile and a quarter from that ground.

Ques. Do you know the Elmira Cox, a schooner?

Ans. Yes, sir.

Ques. Did you see her on the 29th of January?

Ans. Yes, sir.

Ques. How far was she from you?

Ans. Off there. (Indicating.)

Ques. Nearer or further away than this sloop?

Ans. A little further away.

96 Ques. The Cox was further away?

Ans. I think so; yes, sir.

Ques. Did anybody hail the Steelman R. Lee from this sloop?

Ans. No, indeed.

Ques. Was the Elmira Cox further away from you than this sloop all of the time, or did you get closer to her after awhile?

Ans. She came closer to us, coming down towards us on that tack.

Ques. And she kept drawing closer to you, did she?

Ans. Yes, sir.

Ques. And after awhile got nearer to you than the sloop, did she?

Ans. I don't know.

Cross-examination.

By Mr. FITHIAN:

Ques. You are a captain, are you?

Ans. Yes, sir.

Ques. Of what boat?
Ans. The Nancy L. Crozier.
Ques. Is she a sloop or schooner?
Ans. A sloop.
Ques. How long have you been captain of her?
Ans. Since the 27th day of March.

JOHN SHARPLESS, sworn.

Direct examination.

By Mr. POTTER:

Ques. Captain Sharpless, where do you live?
97 Ans. At Leesburg.
Ques. What is your business?
Ans. Oysterman.
Ques. For yourself?
Ans. Yes, sir.
Ques. Do you own a vessel?
Ans. Yes, sir.
Ques. What is the name of it?
Ans. The William B. and William J. Carlisle.
Ques. Has it any other nickname or other name?
Ans. It is commonly called the Two Bills.
Ques. Where were you on the 29th day of January last?
Ans. Well got under way in Maurice River somewhere in the morning and started down the cove.
Ques. Who were with you?
Ans. John Lee and John Chance.
Ques. Yourself, John Lee and John Chance?
Ans. Yes, sir.
Ques. On board of what?
Ans. The Two Bills, or Carlisle, rather.
Ques. After you got under way, where did you go?
Ans. Went down to Peirce's Point, where we started for.
Ques. Where is Peirce's Point.
Ans. Well, down about here (indicating), where we started to go, but on the way down we stopped at Riggins' Ditch, to locate Captain Lee's ground.
Ques. When you went out of Maurice River, or after you got out of Maurice River, did you see the schooner Steelman R. Lee, Jr.?
Ans. We did.
Ques. Where did you see her?
Ans. We went with her all the way down. Of course, we were both beating down sometimes closer than at other times, but I was in the cabin most of the time. I had cut my leg a short time
98 before that, and I sat in the cabin to keep from catching cold in my leg, and Captain Samuel Lee steered my boat all the way down. Of course, part of the time I was on deck, and part of the time I was in the cabin.
Ques. Where did you stop first?

Ans. Well, stopped at Riggins' Ground to locate Captain Samuel Lee's ground.

Ques. Do you know Captain Samuel Lee's ground?

Ans. No.

Ques. Do you know the number of it?

Ans. No.

Ques. Could you point it out on the map?

Ans. I am not positive of that. I haven't any ground there and don't know the location very well. I have got grounds myself below. There is my ground below (indicating), but I don't know anything about these grounds here, because I am not acquainted with them. I haven't any ground within half a mile of that.

Ques. What did you do on Samuel Lee's ground; what did anybody on board do?

Ans. Just sailed around there; and Sam called me out of the cabin to see if I could find any stakes to locate his ground, and after that we went on down.

Ques. While you were sailing around locating Captain Samuel Lee's ground, did you see the Steelman R. Lee?

Ans. Yes, sir; and saw them in the yawl boat and saw some stakes in her.

Ques. How close was she?

Ans. I would say about 50 or 75 yards. I wouldn't say positive.

Ques. Within hailing distance?

Ans. Yes, sir.

Ques. Did you see anybody on board the Steelman R. Lee at any time while you were there put a dredge into the water?

Ans. I did not.

99 Ques. Would you have seen it if they had done it?

Ans. I would; yes, sir.

Ques. Were you there all the time the Steelman R. Lee was?

Ans. Yes; pretty much all of the time. We started down and she came behind us. They were on the ground locating the ground when we came up to them, and then we located Sam's ground, and after we started away and before we got to Pierce's ground they caught us with us.

Ques. Did you see a sloop in the vicinity?

Ans. I saw a sloop coming down from East Point, maybe a mile or mile and a quarter towards East Point.

Ques. A mile or mile and a quarter from you?

Ans. Yes, sir; I wouldn't say positive.

Ques. Did you recognize the sloop?

Ans. Not then. I said to Sam, "I can't tell what boat that is. It looks to me like the Golden Light." They had made some changes in her and I thought it was her.

Ques. Did you see the Elmira Cox?

Ans. Not that I remember, because I wasn't looking or taking any notice much. I was trying to locate the ground and not taking notice of anything else going on, except that the boats were close to us.

Ques. Captain, what was the condition of the stakes around these oyster grounds where you were?

Ans. Most of them were gone pretty bad. Of course, on some grounds they were gone worse than others.

Ques. What do you mean, that they were not very much out of the water?

Ans. Just stuck up a little bit, some a little taller than others, but as a general thing they were gone pretty much along that location.

Ques. Did that make it hard to locate a person's ground?

Ans. It did.

100 Cross-examination.

By Mr. FITHIAN:

Ques. What relation are you to Captain Lee?

Ans. I married his daughter.

Ques. What is your boat's name?

Ans. The William B. and William J. Carlisle.

Ques. Who owns her?

Ans. I do.

Ques. Do you own all of her?

Ans. Yes, sir.

Ques. Have you any grounds in the vicinity of Captain Steel Lee's ground?

Ans. No, sir; have one half a mile below and one about a mile above it.

Ques. You have one about a mile above?

Ans. Half a mile below and a mile above.

Ques. Did you leave Maurice River Cove at the same time as the Steelman R. Lee?

Ans. Yes, sir.

Ques. How large is your ground; do you know the number of acres?

Ans. Yes, sir; about sixteen acres.

Ques. What did you go down there for?

Ans. Went down to stake up the ground and to see how the stakes were.

Ques. This was on the 29th of January, was it not?

Ans. Yes, sir.

Ques. You started out of the cove with Captain Lee, did you not?

Ans. Started from Maurice River at the same time he did, or about the same time.

Ques. For what purpose?

Ans. To locate the grounds and see how the stakes were.

Ques. Did you go down to stake your ground?

101 Ans. Yes; I intended to, and went with Captain Sam Lee.

Ques. On board your boat?

Ans. Yes, sir.

Ques. Did you have any stakes for your ground?

Ans. Yes, sir.

Ques. Did you stop at your first ground?

Ans. No; not in my ground at all.

Ques. Why didn't you?

Ans. We concluded to go to Peirce's Point and wanted to go there first and stop coming back.

Ques. Why did you stop at Sam Lee's ground?

Ans. Well, that was at Riggins' Ditch.

Ques. Why did you stop there?

Ans. Stopped to locate his ground going down.

Ques. Why didn't you stop to locate yours going down?

Ans. Because we were off shore of my ground and didn't tack to it.

Ques. There is your ground there and you were in here?

Ans. That is Captain Sam Lee's ground (indicating), and we tacked off here and tacked down here and then here.

Ques. Well, why did you tack out of your way to this ground and not out of your way to this one?

Ans. We didn't tack out of our way.

Ques. And there wasn't any attempt made to locate this ground of yours, was there?

Ans. No, sir.

Ques. But you did stop to locate Sam Lee's ground?

Ans. Yes, sir.

Ques. Stopped to locate this ground here?

Ans. No, sir; tacked here and then went to Peirce's Point.

Ques. And you measured and staked this ground and this one and examined this ground here, did you not?

102 Ans. Yes, sir.

Ques. But didn't try to locate your own ground?

Ans. No, sir

Ques. Weren't there any stakes aboard?

Ans. No, sir.

Ques. Then you didn't go to stake your ground?

Ans. No, sir.

Ques. Why not?

Ans. Didn't have any stakes. The stakes were in the woods; but Sam had these stakes and went aboard my boat.

Ques. Why didn't he take his boat?

Ans. His boat was locked up and he asked me if he could use mine, as it was lying there.

Ques. And you didn't stop to examine your ground to see how many stakes were needed?

Ans. No, sir.

Ques. Did you hear the testimony of Captain Allen, this morning, when he testified to where you were located?

Ans. Yes.

Ques. Off here in-shore?

Ans. Yes, sir.

Ques. And that is just about the location of your first ground, too, isn't it?

Ans. Where is that?

Ques. Where Captain Allen said you were when he saw Captain

Lee on his ground. There is Captain Allen's (indicating) and here is yours, and isn't this where Captain Allen said you were?

Ans. No, sir.

Ques. Isn't that where Mr. Allen said you were, this morning?

Ans. I don't know about that, because we was below the Golden Light.

Ques. What was the matter with your leg?

Ans. I had cut it while cutting wood.

103 Ques. Were you in the cabin?

Ans. Part of the time. I only came out of the cabin when Sam got up there to locate his ground.

Ques. Where were you sitting in the cabin?

Ans. Part of the time on the locker and part of the time in the companionway.

Ques. And did you watch the Steelman R. Lee all the day down?

Ans. No; I did not.

Ques. Did she go down there ahead of you?

Ans. No, sir; we was ahead of her.

Ques. Did you get down first?

Ans. Pretty much—we was ahead.

Ques. Didn't you testify awhile ago that she got down ahead of you?

Ans. I don't think I did.

Ques. Wasn't it true; didn't he get down to his first ground there, near Captain Allen's, before you got there?

Ans. No, sir.

Ques. You are sure of that?

Ans. I think I am.

Ques. And did you stick any stakes there on Sam Lee's ground?

Ans. No, sir.

Ques. Who left first?

Ans. We did.

Ques. And you went on down?

Ans. Yes, sir.

Ques. And didn't stop at your other ground at all?

Ans. No, sir; because that was inshore and we went off-shore. We went right by Captain Boyle in his steamer and Captain Sam Lee hailed him. I didn't hear just what he said.

Ques. Where is that ground from the Paris Green beds that you went to visit?

Ans. Didn't go to visit any at Paris Green; went to Peirce's Point, to Captain Samuel Lee's ground.

104 Ques. Did you stake that up?

Ans. Yes; stuck four stakes on it. They staked it there; I didn't.

Ques. What time did you get down there?

Ans. I should judge about 2 or 3 o'clock.

Ques. And did you catch any oysters there?

Ans. Yes; I think four boxes on Captain Sam's ground.

Ques. And how did you find Captain Sam's upper ground, near Captain Allen's upper ground?

Ans. Well, the stakes were gone pretty bad.
Ques. Why didn't you stake it up?
Ans. Because, as I said, we would need to stake up the ground at Peirce's Point first, because it was down further.
Ques. It was quite a drop down there, wasn't it?
Ans. Yes, sir.
Ques. And you came to this ground where the stakes were gone?
Ans. Yes, sir.
Ques. Now, if you were on that ground (indicating) why didn't you want to stake it up?
Ans. Because we wanted to go down to the ground below. We wanted to stake that up first, because it was furthest down.

SAMUEL LEE, sworn.

Direct examination.

By Mr. POTTER:

Ques. Captain Lee, where do you live?
Ans. At Leesburg.
Ques. What is your business?
105 Ans. Oystering.
Ques. How long have you been in the oyster business?
Ans. Thirty years, I reckon.
Ques. In business for yourself?
Ans. Yes, sir.
Ques. Are you any relation to Uriah S. Lee?
Ans. A cousin.
Ques. Have you grounds in Maurice River Cove?
Ans. Yes, sir.
Ques. Do you know where they are?
Ans. I can find them.
Ques. Where were you on the 29th day of January last?
Ans. Aboard the William Carlisle.
Ques. Where was the William Carlisle?
Ans. In the mouth of the river in the morning.
Ques. Did you stay there all day?
Ans. No, sir.
Ques. Where did you go?
Ans. I started for Peirce's Point to my ground when it was high water.
Ques. At the time you left the mouth of Maurice River, where was the Steelman R. Lee?
Ans. Right with us all the time.
Ques. Did she come out of the river with you?
Ans. She led out a little and we went right after her all the time.
Ques. You went down into the cove together, did you?
Ans. Yes, sir.
Ques. Did you stop anywhere on the way down to Peirce's Point?
Ans. Yes, sir.
Ques. Where?

Ans. I seen him on the ground and stopped right there on my ground to see how my stakes were.

106 By Mr. FITHIAN:

Ques. Stopped where?
Ans. On my own ground, adjoining Captain Lee's.

By Mr. POTTER:

Ques. Do you know Captain Lee's ground?
Ans. Yes, sir.
Ques. How near is it to yours?
Ans. About ten feet—his corner off from mine. His runs up and mine down.
Ques. Practically next door to each other?
Ans. Yes, sir.
Ques. How long have you owned that ground?
Ans. About fifteen years.
Ques. How long has Steel owned his; as long as that?
Ans. About sixteen years.
Ques. Can you point out your ground on that map?
Ans. I don't know—never seen that map before. I couldn't on that map.
Ques. Well, try it on this map. I will show you Riggins' Ditch. (Indicating.) What is the number of your ground?
Ans. No. 29. There is my ground there. That is Frank's.
Ques. Where is yours?
Ans. No. 29, there.
Ques. Where is Frank Lee's?
Ans. Here.
Ques. Where is Steel Lee's?
Ans. Here.
Ques. Do you know Edward Allen?
Ans. No, sir.
Ques. Did you ever know a man of that name before who owned ground near you?
Ans. No, sir.

107 Ques. Now you stopped, you say, at that ground, No. 29. When you got there, where was the Steelman R. Lee?
Ans. She was right here. (Indicating.) I tacked right across the lower end of his ground.
Ques. How near was the Steelman R. Lee to the Carlisle?
Ans. I don't know—right near the ground.
Ques. Did you see anybody on board the Steelman R. Lee heave a dredge?
Ans. No, sir.
Ques. Well, you were there. If they had heaved a dredge you would have seen it, would you not?
Ans. Yes, sir.
Ques. They couldn't have cast a dredge while you were there without you being aware of it, could they?
Ans. No.

Ques. Did he cast any dredge from her?
Ans. No.
Ques. About how far is it from 137 to 29?
Ans. Well, now, I have been working there this week on my ground here, and I can see his stakes up, can see the stakes in the ground, but I can't say just how far it is from mine.
Ques. Did you see the Steelman R. Lee on this ground?
Ans. No.
Ques. If she had been there, would you have noticed it?
Ans. I would have noticed it if she hadn't been on her own, for her's is right there (indicating), and there is mine.
Ques. Well, did you stake up on that ground?
Ans. No.
Ques. Why didn't you?
Ans. Because we generally go where we start for, and we weren't going there?
Ques. This Carlisle doesn't belong to you, does she?
Ans. No, sir.
108 Ques. Who does she belong to?
Ans. Sharpless.
Ques. Captain, is it, or is it not, the custom for several oyster captains to go down together and help each other stake up their grounds?
Ans. We always do.
Ques. And that is the reason you were together on that day, is it not?
Ans. Yes, sir.
Ques. What kind of a day was it?
Ans. Well, foggy in the morning until about 9 o'clock.
Ques. Did it break away entirely?
Ans. It broke away and rained a little about half-past ten or 11 o'clock, so captain went into the cabin and I steered all the way down.

Cross-examination.

By Mr. Fithian:

Ques. Captain, what relation are you to Captain Steel Lee, the defendant here?
Ans. Cousin, I guess.
Ques. Now, Captain, you left at 9 o'clock, did you?
Ans. I suppose—high water.
Ques. What time did you get to your first ground?
Ans. About 1 o'clock.
Ques. How long were you in getting down?
Ans. About three hours.
Ques. The wind was against you, was it?
Ans. Had a head wind.
Ques. Did you have a pretty good sloop?
Ans. Yes, sir.
Ques. Your board was frozen up, too, was it?

Ans. Yes, sir.

Ques. Now will you just point out on the map the course which you took when you ran down there?

109 Ans. You can't run down with a head wind.

Ques. Well, as you beat down then?

Ans. We beat down to here.

Ques. Just point out on the map the course you took as you ran down.

Ans. Well, we had a head wind and naturally we had to tack, but afterwards I got out in this place (indicating) and then I missed a tack, and then it was tack in and tack off until we got down here.

Ques. Did you make long tacks or short ones?

Ans. Well, sometimes if it is a bad tack close to shore. When the tide is down you can't tack in.

Ques. Were some of the tacks a mile long?

Ans. Yes, sir.

Ques. Any longer than that?

Ans. Two miles, sometimes three.

Ques. Going down, that was?

Ans. Oh, no.

Ques. How long that way?

Ans. About a mile or so.

Ques. Did Captain Lee go down with you at the same time?

Ans. Yes, sir.

Ques. Did you keep close together?

Ans. He tacked in and we tacked off.

Ques. How far away were you at the farthest going down?

Ans. It wasn't, I suppose, over half a mile. We tacked in and he tacked offshore.

Ques. You kept close together all the way down, did you?

Ans. Yes, sir.

Ques. Did you stop at Captain Sharpless' ground up here?

Ans. No, sir; wasn't down there.

Ques. You stopped at this ground? (Indicating.)

Ans. Stopped to see how my stakes were for that ground.

110 Ques. Could you see them as you went into the ground?

Ans. Two corners we couldn't see at all.

Ques. Did you stop there?

Ans. Not long.

Ques. How long?

Ans. About five or six minutes.

Ques. Could you see where the stakes were as soon as you got to that ground?

Ans. No, sir.

Ques. You had to sail around, did you?

Ans. Not very much.

Ques. Was Captain Lee there before you got there, or afterwards?

Ans. Just before we got there. He tacked off into his ground and we tacked off into mine.

Ques. And were you in your grounds about five minutes?

Ans. Yes, sir.

Ques. And then you went on down and left him there?
Ans. No; they stuck four stakes, and then came right after us.
Ques. And he was there twenty minutes and you five. Then you must have left him there, didn't you?
Ans. Not very long. Only a few minutes after we left—just stuck these four stakes and left.
Ques. You didn't stick any stakes?
Ans. No, sir.
Ques. Why didn't you?
Ans. Because we didn't want to there.
Ques. Did you have your stakes on board?
Ans. Yes, sir; about eight or nine.
Ques. If you didn't want to stick any stakes there why did you stop there?
Ans. Just to see my ground; just to look at the stakes.
Ques. Just to look at the ground?
Ans. Well, to see how the stakes were on it.
111 Ques. Did he go there before you did?
Ans. Yes, a little bit.

Redirect examination.

By Mr. POTTER:

Ques. Did I understand you to say, Captain, that the well of your centerboard was frozen?
Ans. Yes, sir.
Ques. Did you manage to get it loose at all?
Ans. Not that day.

JOHN CHANCE, sworn.

Direct examination.

By Mr. POTTER:

Ques. Captain Chance, where do you live?
Ans. Leesburg.
Ques. Are you a captain of a vessel?
Ans. Yes, sir.
Ques. Where do you work, in Maurice River Cove or in the Chesapeake?
Ans. Maurice River Cove.
Ques. Are your grounds in Maurice River Cove?
Ans. Yes, sir; I have two there.
Ques. Where were you on the 29th day of January last?
Ans. I went down the river with Mr. Sharpless and Mr. Lee.
Ques. What vessel were you on?
Ans. The Two Bills.
Ques. What is her other name; do you know?
112 Ans. The William J. and William B. Carlisle.
Ques. Where were you on that day when on board the Two Bills?

Ans. Well, we were going from the mouth of the river to Peirce's Point.

Ques. Did you stop anywhere on your way from the mouth of the river to Peirce's Point?

Ans. Stopped on Mr. Lee's ground.

Ques. When you left the mouth of Maurice River Cove, did you see the Steelman R. Lee?

Ans. Yes, sir.

Ques. Where was she?

Ans. She was on her way down.

Ques. Did she or did she not keep close to you on her way down?

Ans. She kept pretty close to us all the way down.

Ques. When you got down to Samuel Lee's ground, where was the Steelman R. Lee?

Ans. She was there on her ground.

Ques. How far away from the Two Bills?

Ans. Not more than a hundred yards.

Ques. Could you talk from one vessel to the other and understand what was said?

Ans. Yes, sir.

Ques. Were you on the deck of the Two Bills?

Ans. I came on the deck when we went into the ground. Captain Lee called me out.

Ques. Where were you?

Ans. I was in the cabin until we got in the ground, but was on deck once in awhile.

Ques. What was your duty on board?

Ans. I did the cooking, then; was getting dinner.

Ques. Now, how long do you think the Two Bills was on Captain Samuel Lee's ground?

Ans. Not more than five or six minutes.

Ques. Was the Steelman R. Lee on her ground when you got there?

113 Ans. Yes, sir.

Ques. What was the Steelman R. Lee doing?

Ans. Was fixing stakes there.

Ques. Did you see anybody on the Steelman R. Lee put a dredge overboard?

Ans. No, sir.

Ques. On Captain Samuel R. Lee's ground?

Ans. No, sir.

Ques. Did anybody on the Steelman R. Lee boat stop on Captain Edward Allen's grounds?

Ans. No, sir.

Ques. Do you know Captain Edward Allen's grounds?

Ans. No, sir.

Ques. If anybody on board the Steelman R. Lee had put a dredge overboard, would you have seen it?

Ans. Yes, sir.

Ques. Would you have heard them winding it up?

Ans. Yes, sir; if they had done it.

Ques. Where did you go after you left Captain Samuel Lee's ground?

Ans. Went to Peirce's Point.

Ques. Did you leave the Steelman R. Lee behind?

Ans. Not far.

Ques. Did she catch up with you?

Ans. Not in there.

Ques. What kind of a morning was it, Captain?

Ans. In the morning it was foggy, and rained a little around 12 o'clock, I should judge.

Ques. Could you see these stakes very plainly that day?

Ans. No, sir.

Ques. Were the grounds hard to locate?

Ans. Captain Lee's ground was.

Ques. When you were on Captain Lee's grounds, on the 29th day of January, did you see a sloop?

114 Ans. Yes, sir; when we were on the ground we saw this sloop.

Ques. Where was it?

Ans. Off toward East Point, I should judge, a mile and a half.

Ques. Did you know the sloop?

Ans. No, sir.

Ques. While you or the Steelman R. Lee were on these grounds, did this sloop get within a half mile of you?

Ans. No, sir.

Cross-examination.

By Mr. Fithian:

Ques. Why did you go down on this trip, Captain Chance?

Ans. Well, I went down on the trip to see my grounds, of course.

Ques. To see your grounds?

Ans. Yes, sir.

Ques. And where are your grounds?

Ans. Down at Peirce's Point.

Ques. Have you any grounds between the cove and Peirce's Point?

Ans. No, sir.

Ques. Were you doing the cooking?

Ans. Yes, sir.

Ques. Where did you cook?

Ans. In the cabin.

Ques. Did you have dinner before or after you got to Captain Samuel Lee's ground?

Ans. Before.

Ques. About what time did you have dinner?

Ans. Somewhere about 12 o'clock, I should judge.

Ques. Then you had dinner before you got to the grounds, did you?

115 Ans. Yes, sir.

Ques. And who cleaned up the dinner dishes?

Ans. I cleaned them up.

Ques. And you were in the cabin when you got to Samuel Lee's ground, were you?

Ans. Yes, sir. He called me out—I had been in the cabin stirring the dinner up.

Ques. Well, how did you know where Captain Steel Lee was when you were doing that?

Ans. I came on deck to see.

Ques. To see if he were close to you?

Ans. I wasn't particularly watching him as I know of, but I came up.

Ques. About what time did you go down to Samuel Lee's grounds?

Ans. Between 12 and 1 o'clock.

Ques. You went there after dinner?

Ans. Yes, sir.

Ques. Now, you know where Captain Lee's ground is, do you not?

Ans. I know pretty near where it is.

Ques. Had you ever been on it before?

Ans. Yes, sir.

Ques. You go with Captain Lee, do you?

Ans. Once in awhile.

Ques. Captain Steel and you.

Ans. No, sir.

Ques. Captain Samuel Lee?

Ans. Yes, sir.

Ques. Could you go and find the grounds yourself?

Ans. Yes, sir.

Ques. Without any trouble?

Ans. Yes, sir.

Ques. Did you see the Elmira Cox?

Ans. No, sir.

Ques. Was she in sight when you were there on Samuel Lee's ground?

116 Ans. I didn't see her.

Ques. Was she within a mile of you?

Ans. I didn't see her.

Ques. Well, would *have you* seen her if she was within a mile of you?

Ans. Yes; I might see her.

Ques. You know the Elmira Cox, do you not?

Ans. Yes, sir.

Ques. Do you know her well?

Ans. Yes, sir; when I see her.

Ques. Then you know whether or not she was within a mile of you when you were on Captain Samuel Lee's ground, do you not?

Ans. I don't know, for I didn't see her to know her.

Ques. If she had been within a mile of Captain Lee's ground you would have known her, would you not?

Ans. Yes, sir.

Ques. Was she there?

Ans. I didn't see her.

Ques. If she had been there you would have seen her?
Ans. Yes, sir.

By Mr. POTTER:

Ques. Captain, is it the custom of oyster captains to get together after the ice breaks up and go down and stake up?
Ans. Well, me and Captain Sam Lee always go together.

By Mr. FITHIAN:

Ques. Captain, what day of the week was this?
Ans. On Thursday, I think.
Ques. Have you been down there since then?
Ans. Yes, sir.
117 Ques. What day did you go down there next after this?
Ans. On the following Monday.
Ques. Who went with you?
Ans. Captain Sam Lee and Sharpless and myself.
Ques. The same crew as went down on Thursday?
Ans. Yes, sir.
Ques. And did you see Captain Boyle this second time?
Ans. He was down there; yes, sir.
Ques. Did you see him the first time?
Ans. Not at Riggins' Ditch—seen him off Cape May.
Ques. That was the first time?
Ans. Yes, sir.
Ques. You all went down together the second time, did you?
Ans. Yes, sir.
Ques. On Monday?
Ans. Yes, sir.
Ques. You and Captain Samuel Lee and Sharpless and Captain Steel Lee and his crew all went down together on Monday again?
Ans. Yes, sir.
Ques. You sort of travel together, don't you?
Ans. Well, I didn't see Captain Steel Lee. He wasn't down on his ground when I went down on Monday.
Ques. On the following Monday?
Ans. Yes, sir.

LYLBURN COX, sworn.

Direct examination.

By Mr. POTTER:

Ques. Captain Cox, where do you live?
Ans. Leesburg.
118 Ques. Are you any relation to Captain Steel Lee?
Ans. I don't know that I am
Ques. What is your business?
Ans. Oysterman.
Ques. For yourself?
Ans. Yes, sir.

Ques. Are you a captain of a vessel?
Ans. Yes, sir.
Ques. What is the name of your vessel?
Ans. The Elmira Cox.
Ques. Where were you on the 29th day of January last?
Ans. I went out of the river that morning after the fog cleared up.
Ques. Where did you go?
Ans. Went down to what is called the Alabama Grounds.
Ques. For what purpose?
Ans. To locate our grounds.
Ques. Who else was aboard the Elmira Cox?
Ans. My father and Frazier Wilden.
Ques. Do you know the Steelman R. Lee when you see her?
Ans. Yes, sir.
Ques. Did you see her that day?
Ans. Yes, sir.
Ques. How near were you to her at any time?
Ans. Well, I suppose three-quarters of a mile from the Steelman R. Lee.
Ques. Where was she?
Ans. She was on her ground, I suppose. That is where they said they were. I don't know where their ground is.
Ques. Where are the Alabama Grounds?
Ans. I don't know as I could find it on the map. I am not acquainted with that chart. Probably Mr. Bacon could find it.
119 Ques. What is the number of your ground; do you remember?
Ans. I forget now.
Ques. What direction was the Steelman R. Lee from the Elmira Cox?
Ans. About east.
Ques. Did you see anybody on board the Steelman R. Lee heave a dredge at any time?
Ans. No, sir; didn't see them.
Ques. Did you see the Two Bills or the W. J. and W. B. Carlisle on that day?
Ans. Yes, sir.
Ques. Where was she with reference to your vessel?
Ans. A little mite ahead of the Steelman R. Lee, tacking off-shore.
Ques. Were both of the vessels under sail?
Ans. Yes, sir.
Ques. How far had you watched the Two Bills and the Steelman R. Lee?
Ans. Well, from down about Great Island, just below East Point bar.
Ques. Were they close together?
Ans. Pretty close together as near as we could tell.
Ques. Did you see a sloop on that day and at that time?
Ans. Saw a sloop go'ng down between us and the Steelman R. Lee and the Two Bills.
Ques. How close would you say the sloop was to you?

Ans. About a quarter of a mile, I should imagine.

Ques. Then how close would that make her to the Steelman R. Lee and the Two Bills?

Ans. About half a mile, as I look at it.

Ques. Did you know this sloop?

Ans. No; I didn't know her. She had new spars and I didn't know her until she got near the ground, because she was then close to us.

Ques. The sloop was near you?

Ans. Yes; she hove to and they were eating dinner or some-
120 thing in the cabin. None of them were on the deck.

Ques. How far away are your grounds from the grounds where the Steelman R. Lee was?

Ans. How far is my ground from that?

Ques. Yes; could you see the Steelman R. Lee from your grounds when you got there?

Ans. Yes; but she had gone, gone down shore.

Ques. Did the sloop go within hailing distance of the Steelman R. Lee at any time.

Ans. We didn't get within hailing distance of the sloop and I don't think he did. I think we were going down some. Our centerboard was clear.

Ques. Had your centerboard been frozen up?

Ans. No; because she was on the mud.

Ques. Captain, did you notice the jib of the Steelman R. Lee, whether it was held down or up?

Ans. I didn't notice the jib, but I noticed men in the yawl boat.

Ques. You saw men in the yawl boat?

Ans. Yes, sir; saw them stick a stake with a sack on it.

Ques. So you didn't see anybody heave a dredge?

Ans. No; I didn't see them. At the time these men were in the yawl boat sticking up this sack I think the sloop was up above them.

Ques. How far away?

Ans. I couldn't tell you that.

Ques. Within hailing distance?

Ans. No, sir.

Ques. Is that as close as the sloop got to the Steelman R. Lee at any time?

Ans. Yes, sir; they started after him but couldn't catch him.

Ques. Do you know Edward Allen?

Ans. No, sir.

Ques. Do you know of any grounds that are owned by Edward Allen?

121 Ans. I don't know anything about his grounds.

Ques. Do you know where Lee's grounds are?

Ans. No, sir. I saw about where his boat was working, that is all.

Ques. Did you see Lee working his boat, his schooner, at any other place than where you saw these men in the yawl boat; by that I mean did you see them heave to or luff, or anything of that kind, as if they wanted to stop?

Ans. No, sir.

Ques. What kind of a day was that day?
Ans. Well, it was foggy in the morning.
Ques. Did it rain?
Ans. I don't remember about that. I didn't pay much attention to the day.

Cross-examination.

By Mr. FITHIAN:

Ques. Captain, where is that ground? (indicating.)
Ans. Down in the cove, I expect.
Ques. Do you know the number of it?
Ans. No, sir; I don't.
Ques. Do you know the number of your own ground?
Ans. No, sir.
Ques. Is your lease here?
Ans. No, sir.
Ques. If I point out your ground on the map will you tell me whether it is yours or not; is that yours right there?
Ans. I wouldn't say.
Ques. Well, where is your ground?
Ans. Right here (indicating).
Ques. No. 32; is that your ground—Section B?
Ans. Yes, sir.
122 Ques. Now, what time did you leave the mouth of Maurice River Cove?
Ans. Left there at high water, I guess, about.
Ques. Now, did you leave the Lee behind you as you started?
Ans. No; Lee was ahead of us.
Ques. And you went down to your ground?
Ans. Yes, sir.
Ques. Did you pass Lee going down?
Ans. No, sir.
Ques. The Lee was ahead of you?
Ans. Yes, sir.
Ques. How far ahead of you?
Ans. About three-quarters of a mile.
Ques. Three-quarters of a mile ahead of you. You said half a mile awhile ago, didn't you?
Ans. No, sir.
Ques. Three-quarters, you say?
Ans. Yes, sir. That is what I undertook to say, anyway.
Ques. Did you see him when he stopped on his ground?
Ans. I saw him; yes, sir. I don't know whether it was his ground or not. He says he has a ground there.
Ques. Did you see him when he stopped?
Ans. Yes, sir.
Ques. How far ahead of you was he?
Ans. About three-quarters of a mile.
Ques. That is about right, is it?
Ans. About right or I wouldn't tell it.

Ques. Do you know whose ground it was that he stopped on?
Ans. No, sir.
Ques. But you saw him stop?
Ans. Yes, sir.
Ques. Then you came on down and went on your ground?
123 Ans. Yes, sir.
Ques. And how far is your ground from his?
Ans. Well, close; somewheres between three-quarters of a mile and a mile from his ground.
Ques. About three-quarters of a mile from his ground?
Ans. Yes; as near as I could tell. I never measured it.
Ques. That is about the same distance that he was ahead of you; is that right?
Ans. Yes.
Ques. About three-quarters of a mile to a mile?
Ans. Yes.
Ques. And the sloop the Golden Light was behind you and Captain Steel Lee?
Ans. Yes.
Ques. And nearer the Lee than you were?
Ans. Nearer to him than he was to me.
Ques. But the Golden Light was nearer to Lee than you were to Lee; the Golden Light was between you and Lee, was it not?
Ans. Yes.
Ques. And about how far from the Lee, would you say?
Ans. I should think half a mile.
Ques. Where were you when you first saw the Golden Light?
Ans. Why, we were off East Point.
Ques. Was the Golden Light ahead of you that day?
Ans. Ahead of us all the time?
Ques. Then going down was first the Steelman R. Lee and then the Golden Light and then your boat; is that right?
Ans. Yes, sir.
Ques. Beating down?
Ans. Beating down.
Ques. Did you notice what the Steelman R. Lee was doing when she stopped down there?
124 Ans. I noticed their men in the boat fixing stakes.
Ques. What were they doing before that?
Ans. Well, sailing around looking for their ground.
Ques. Beating up and down or sailing around in a circle?
Ans. Kind of looking after ground. I didn't take much notice of their sailing.
Ques. What did you mean when you said that the sloop chased the Steelman R. Lee, but couldn't catch her?
Ans. I meant that she followed her on down there.
Ques. How long did the Steelman R. Lee stop when she stopped on this ground? (Indicating.)
Ans. I don't know. I didn't time her.
Ques. And she was about half a mile ahead of the Golden Light?

Ans. I don't know just how far she was, but about half a mile ahead of her.

Ques. Then if the Steelman R. Lee was half a mile ahead of the Golden Light and the Steelman R. Lee stopped there twenty minutes, didn't the Golden Light have time enough to catch her or the other one to catch her and close the gap between them?

Ans. No; the Golden Light didn't go right straight to her. The Golden Light ran up shore and then went down.

Ques. Beating down?

Ans. No; she wasn't beating down.

Ques. Why was she going through all these manœuvres?

Ans. Trying to locate ground, I thought.

Ques. And you were about half a mile between the two of them?

Ans. Yes, sir.

Ques. As they were going on down?

Ans. Yes, sir.

Ques. And when the Steelman R. Lee stopped on what you supposed to be Steelman R. Lee's ground, there was a distance of half a mile between the two boats, was there?

125 Ans. Yes, sir.

Ques. If there was a half mile difference, in twenty minutes it would have been possible for the Golden Light to have gone within hailing distance, would it not?

Ans. Not the way she was going.

Ques. If she had started to close the distance between them she could have done it in twenty minutes, could she not?

Ans. I don't know.

Ques. What rate of speed were they making down the bay?

Ans. I don't know.

Ques. Two miles an hour or a mile an hour?

Ans. I should put it at two miles an hour, at least, if they were going ahead any.

Ques. Then in twenty minutes the Golden Light could about have closed up the gap, couldn't she?

Ans. If she had tried; yes, sir.

Ques. Who was ahead, the Two Bills or the Steelman R. Lee?

Ans. Well, that is hard to tell when a couple of boats are on the wind, which is ahead.

Q. And did the Two Bills stop, too?

Ans. Well, she might have stopped a short time, very short time.

Ques. I say do you know whether she stopped or not?

Ans. I don't know.

Redirect examination.

By Mr. POTTER:

Ques. Captain, at the time the Steelman R. Lee stopped, did they immediately put out this yawl boat and commence to stake up?

Ans. In a very short time they did.

Ques. You were close enough, were you, to see that definitely and plainly?

126 Ans. We saw the men in the boat and saw the stake there with the sack on it.

Ques. Would you be willing to swear, Captain, at half a mile's distance that somebody else was dredging on your ground?

Ans. Well, the way my stakes was that day and the way the tide was I wouldn't swear to my ground a hundred yards, because I couldn't tell anything about it.

By Mr. ACTON:

Ques. It is considerable trouble to find your own ground anyway, is it not?

Ans. Sometimes it is; yes, sir.

FRAZIER WILDEN, sworn.

Direct examination.

By Mr. POTTER:

Ques. Captain Wilden, where do you live?
Ans. Leesburg.
Ques. What is your business?
Ans. Oystering.
Ques. How long have you been oystering?
Ans. About fifteen years, I guess.
Ques. For yourself?
Ans. Partly so.
Ques. Are you the captain of an oyster vessel?
Ans. Yes, sir.
Ques. Are you any relation to the Lees?
Ans. Yes, sir.
Ques. What relation are you to Steel Lee?
Ans. Brother-in-law.

127 Ques. Where were you on the 29th day of January last?
Ans. We were going out in the cove.
Ques. What vessel were you on?
Ans. The Elmira Cox.
Ques. Who else was on board?
Ans. Captain Cox and his father.
Ques. And by Captain Cox you mean Wilmer Cox?
Ans. Yes, sir.
Ques. Where were you going?
Ans. Going out to locate our grounds to see if the stakes were gone.
Ques. On that day, did you see the Steelman R. Lee?
Ans. I saw her; yes, sir.
Ques. Where did you see her?
Ans. Saw her going down the shore.
Ques. Did you see the Two Bills?
Ans. Yes, sir.
Ques. Where was she?
Ans. Close to her.

Ques. Did you see the Golden Light?
Ans. I did.
Ques. Where was she?
Ans. She was heading down?
Ques. Was she between you and the Two Bills and the Steelman R. Lee?
Ans. She was between us and the Steelman R. Lee.
Ques. How near were you to the Golden Light?
Ans. To the best of my knowledge, a quarter of a mile.
Ques. How far apart would you say that the Golden Light and the Steelman R. Lee were?
Ans. About half a mile.
Ques. Did you see the Steelman R. Lee stop?
Ans. I seen her lay there to the wind like.
Ques. Did you see anybody on board heave a dredge overboard?
128 Ans. No, sir.
Ques. Could you have seen it if they had done so?
Ans. I think so.
Ques. What did they appear to be doing?
Ans. They were doing the same as we were, looking for their ground.
Ques. Did they do anything else?
Ans. I seen two men, I think, get in the yawl boat, and when they got aboard there was a sack on the stake.
Ques. Do you know whose grounds these were where they were staking?
Ans. No, sir.
Ques. Do you know where Captain Allen's grounds are?
Ans. No, sir.
Ques. At the time they were apparently hunting for the grounds, did they, right away, put over the yawl boat?
Ans. It wasn't long, I don't think, before he stopped, that I seen the men get in the boat.
Ques. Where was the Golden Light at this time?
Ans. Well, like us, staking up. She was heating down.
Ques. How far was she from the Steelman R. Lee?
Ans. At that time?
Ques. Yes.
Ans. I don't know whether she had gained any on her or not. I couldn't say.
Ques. Was she within hailing distance?
Ans. I hardly think she was.
Ques. Did you hear them try to hail?
Ans. No, sir.
Ques. Well, she was nearer to you than she was to the Steelman R. Lee, you said?
Ans. Yes, sir.
Ques. Then if she had hailed the Steelman R. Lee you would have heard it, would you not?

129 Ans. I don't know about that. I might have and might not. I might not have paid any attention to it.

Ques. Which way was the wind?

Ans. Well, the wind was south, southeast.

Ques. And the Golden Light was between you?

Ans. We were in the rear, and then the Golden Light and the Steelman R. Lee.

Ques. Then if the Steelman R. Lee could have heard a hail from the Golden Light, could you have heard a hail from it?

Ans. If I had listened.

Ques. Were you to the windward?

Ans. We were to the leeward.

Ques. I mean to the leeward.

Ans. To the leeward.

Ques. Then would it have been harder for you to have heard a hail from the Golden Light than those on board of the Steelman R. Lee?

Ans. Surely.

Ques. How long did the Steelman R. Lee stop there staking up?

Ans. Not long.

Ques. Where was the Two Bills at this time?

Ans. I don't know where she was. I didn't notice. I didn't pay any attention to her.

Cross-examination.

By Mr. FITHIAN:

Ques. Why didn't you pay any attention to the Two Bills, Mr. Wilden?

Ans. Because I had no reason to.

Ques. Did you pay any attention to the Lee?

Ans. I seen her there.

Ques. Why didn't you see the Two Bills?

Ans. I did see her, but paid no attention to her.

130 Ques. Where was the Two Bills when you saw the Lee there?

Ans. I only saw the Lee; I think she was just a little bit below.

Ques. Do you know where she was?

Ans. Not exactly.

Ques. Why did you tell me a little while ago that you didn't know?

Ans. I said I didn't know exactly.

Ques. Do you know where the Two Bills was?

Ans. No, sir; not exactly. I can only say to you that I know where the Lee was. I knew where the sloop was, but I don't know where the Two Bills was.

Ques. That is right, is it?

Ans. That is right; yes, sir.

Ques. And as they were going down you saw that the sloop was between you and the Steelman R. Lee, did you not?

Ans. Yes, sir.

Ques. Was she between you and the Two Bills?

Ans. Yes, sir.

Ques. Well, why, when counsel asked you if the sloop was between you and the Steelman R. Lee and the Two Bills, did you state that she was between you and the Steelman R. Lee, but refused to say she was between you and the Two Bills?

Ques. He didn't ask me.

Ques. Then I certainly misunderstood his question if he didn't. Now, how far ahead of you did the Two Bills and the Steelman R. Lee leave the cove?

Ans. I don't know when they left the cove.

Ques. Well, the mouth of the river?

Ans. I don't know that. I didn't see them leave the mouth of the river.

Ques. You didn't see them when they left?

Ans. No, sir.

Ques. Where were they when you did see them?

131 Ans. Down below East Point bar quite a ways when I first saw her.

Ques. And how near to Captain Lee's ground were you when you first saw her?

Ans. I couldn't tell you.

Ques. Close to it?

Ans. Not close to where they stopped. I didn't know where the Lee grounds were.

Ques. And you don't know what they were doing before they stopped?

Ans. No, sir.

Ques. How long before they stopped was it that you saw them?

Ans. Well, I don't know. I didn't time them.

Ques. A few minutes?

Ans. Yes, sir.

Ques. About five minutes?

Ans. Longer than that, I guess.

Ques. About ten minutes?

Ans. Something like that.

Ques. Then until about ten minutes before you saw the Steelman R. Lee stop you hadn't noticed this boat. Is that right?

Ans. That is right.

(Leage offered in evidence and marked Ex. D1.)

Mr. Acton: If your Honor please, it might be well to know what we are trying before presenting this case to the jury, and I would like the prosecutor to inform me if he presses both counts of this indictment.

Mr. Fithian: Yes.

Mr. Acton: Then I shall ask the Court at this time to pass upon the question of larceny in the second count of this indictment.

132 (Reads from indictment.) I don't care to waste any time upon that count unless the Court deems it necessary. There is absolutely no proof before the Court that there were any oysters

taken, not a scintilla of testimony. Neither Mr. Allen nor the other men with him, when numerically asked with reference to any oysters being taken, stated that they knew of any oysters being taken.

Now, I don't know of indictments being tried by innuendo or inference. There is an allegation and a proof. There has been absolutely no proof before this Court of an oyster being taken; there wasn't an oyster seen which came on board; there wasn't an oyster found in the possession of these people and not a scintilla of evidence before the Court that any oysters were taken.

(Mr. Fithian replies.)

The COURT: I understand Mr. Acton's application to be an application to the Prosecutor of the Pleas to tell upon which count of the indictment he relies, or whether or not he relies upon both counts. The Prosecutor's answer is that he relies upon both counts and declines to abandon either of them. Now, I will consider Mr. Acton's motion as one for binding instructions but will reserve any decision respecting that motion until I come to speak to the jury at the end of the arguments of counsel.

Both sides rest.

Adjourned until 10 a. m. Friday, May 15, 1903.

133 Trial of the cause resumed at 10 a. m. Friday, May 15, 1903.

Counsel for the defence objects to the following statement which the prosecutor made in his final argument to the jury:

"There might be evidence in this case to lead the jury to believe that these defendants might be the same parties who stole those oysters."

(Objection overruled.)

Whereupon the defendants, by their counsel, pray a bill of exceptions, which is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD, *Judge*. [L. S.]

Charge of the Court.

GENTLEMEN OF THE JURY:

It is my duty, before this case is committed to you for decision, to declare to you the principles of law which control the case and to make such brief references to the testimony as will, perhaps, the better aid you in applying these principles of law. Now, this indictment charges the three defendants, Uriah S. Lee, Frank Lee and Harry Sutton, with two distinct offences. It contains two counts. The first count is a charge that they illegally dredged on grounds under the waters of Delaware Bay, in this State, on the 29th day of January last, and the second is a charge that they committed larceny there on that day. Under this indictment it will be lawful
134 for you to render a verdict that the defendants are not guilty, or that some of them are not guilty and some of them are guilty, or that all are guilty. And as to those whom you find guilty,

it will be lawful for you to find some guilty of illegal dredging, as charged in the first count of the indictment, and some guilty of larceny, or that they are all guilty of larceny, or all guilty of illegal dredging.

In your deliberations you are to bear in mind the legal rule pertinent to all criminal prosecutions in this State, that the defendants are to have the benefit of any reasonable doubt. If there be a reasonable doubt whether the defendants be guilty or innocent they are entitled to a verdict of not guilty. But by reasonable doubt is not meant a hesitation of the mind to accept proofs because of a mere chance or possibility of error. It means, rather, some uncertainty of judgment for which a reason satisfactory to the conscience can be given, after all the evidence has been fully considered with a sincere desire to ascertain the truth. Nor is a doubt reasonable in this sense if it springs from a fear or dislike of the consequences to follow from a declaration of the truth. The mind must be regardless of these consequences save as they may operate as an incentive in the search for truth. In your deliberations you are also to remember that upon you rests the responsibility of deciding all questions of fact. Whether the testimony of any particular witness, upon any particular point, is to be believed or disbelieved, whether, out of any circumstances or group of circumstances proved, a fact which might reasonably be inferred therefrom shall be so inferred, are matters wholly for your decision. So with the matter of the credibility of witnesses and what weight is to be given to their testimony; those are matters exclusively for you.

The first count in this indictment charges that the defendant did dredge upon or throw, take or cast a dredge or other instrument used for the purpose of catching oysters, upon an oyster bed
135 or ground, duly marked, buoyed or staked up, within the waters of Delaware Bay or Maurice River Cove, in this State, belonging to Edward Allen, without his permission, he being the lessee of the ground. Now, the Legislature, in its wisdom, has declared that it shall be unlawful for any one to do what the defendants have been charged with doing in this count of the indictment which I have just repeated to you.

Now, gentlemen, it seems to be undisputed that the oyster ground known as No. 137, section B, within the waters of Delaware Bay, in this county, belonged to Edward Allen by virtue of a lease from the State Oyster Commission. The witnesses upon the part of the State, Mr. Allen and some others, have testified that on the day named in the indictment this ground was duly marked, buoyed or staked up, and it is undisputed in this case that the owner of that ground, Captain Allen, was in possession of it and had planted there upwards of three thousand bushels of oysters. Now, if these facts which I have just referred to are found by you, if it is found by you that on the day charged in the indictment the ground in question was duly marked, buoyed or staked up and was in the possession of the lessee, Mr. Allen, it then remains to be considered whether or not the defendants on that day dredged or threw, took or cast a dredge or other instrument used for the purpose of catching oysters upon

that ground. If you find that they did, then they should be convicted of illegal dredging, as charged in the first count of the indictment.

Now, the State produces, bearing upon that question, the owner of the ground, and he testifies that on the day named in the indictment he, aboard of the Golden Light with Captain Hilton, visited his ground; that as they approached it—you will recall just how near they placed themselves, from their testimony—as they approached it they saw these defendants aboard of a vessel called the Lee
136 manoeuvering up and down this ground, No. 137, section B, of Captain Allen, and heaving their dredges thereon. Now, gentlemen, if you believe that testimony, if you believe that occurred as these witnesses for the State say it occurred, then, regardless of whether or not they got any oysters, if they were throwing their dredges there upon that ground they should be convicted under the first count of this indictment. Now, do you believe that story? Do you believe the testimony of Allen and of Hilton? Before reaching a conclusion upon that question you will, of course, consider all of the other testimony in the case which throws any light upon it. The defendants all went upon the stand, as I recall, and testified that they were not upon this ground of Captain Allen and that they did not dredge or heave a dredge there. You will consider that testimony. The defendants also produced the crew of the Elmira Cox and also the crew or the persons aboard of the Carlisle and they gave some testimony which tends to show that the story of the defendants is true, namely, that they did not heave any dredge. You will recall what their testimony was. They told about what part of the bay they were in and the relative positions of their boat and the Lee boat. They told you about what their opportunities for observation were and then they gave testimony on that subject.

Now, considering all of this testimony and any other testimony in the case, you ought to determine whether or not the defendants were there heaving their dredges and dredging upon this ground. And in endeavoring to ascertain the truth from this conflicting testimony it is but the dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely. The testimony in this case is conflicting, gentleman, and I say to you that it is but the dictate of common sense that you should consider carefully whether or not any of these witnesses have any motive to testify falsely. Thus, has the owner of the ground any motive to testify that the defendants were there dredging if they were
137 not there dredging? Has Captain Hilton any motive to testify that the defendants were there dredging if they were not there dredging? Have the defendants any motive to deny such an accusation if the accusation be true? Have the people aboard of the Carlisle and the Elmira Cox any motive to testify falsely for the defendants? There may be other circumstances which throw more or less light upon the character of the transactions of the defendants while in the neighborhood of the ground, such as the movement of the vessel of the defendants down the bay ahead of the Golden Light. That may or may not be significant, just as you view

it, but such and other circumstances have been fully discussed by counsel before you and I leave them to your memory and reflection without further comment.

I repeat, if you are satisfied that the defendants dredged there, that they threw their dredges there, they should be convicted of illegal dredging independent of any conclusion you reach as to whether or not they caught oysters.

The second count in the indictment charges the defendants with the larceny of fifty baskets of oysters of the value of fifty dollars, the goods and chattels of Edward Allen. The Prosecutor of the Pleas conceiving that there can be no conviction of grand larceny in view of the proofs, does not contend for a conviction of grand larceny, but he does contend that the proofs in this case justify a conviction for petit larceny. Now, do they, gentlemen? That will depend upon what you find about the facts of the case. If you are satisfied that some of the same oysters which Mr. Allen planted were unlawfully taken by the defendants with the intent to steal them, and if you are satisfied that they were planted on the ground, which was so marked and identified that the oysters could be readily found and identified, and so that the defendants or others going in those waters for any lawful purpose could readily know that those
138 oysters were planted there and held as private property, the Court is of the opinion that the oysters were the subject of larceny and the defendants may be found guilty of petit larceny.

Counsel for the defendants have submitted a number of requests to charge which I cannot charge, except as I have already charged.

Defendants' Requests.

1. I respectfully ask the Court to direct an acquittal, because it is not shown that the stakes or monuments set on the Allen lot were set at the corners or on the boundaries thereof as indicated on the map, or had been set there by order of the Oyster Commission.

2. Because the ground claimed by Allen was not duly marked so as to be easily located, and because the proofs show that the stakes or monuments there on January 29, 1903, were not set under the supervision of the State Oyster Commission.

3. It has not been proven that any oysters were taken by the defendants from the beds of Allen or that Allen lost any oysters or the value thereof.

Which several requests the said Court refused, and to such refusals the defendants excepted and exceptions are hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD, *Judge.* [L. S.]

139 *Defendants' Exceptions.*

1. The defendants take exception to the charge of the Court as a whole.

Which exception is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD, *Judge.* [L. S.]

2. The defendants also except to the several refusals of the Court to charge as requested by the defendants.

Which exception is hereby allowed and sealed accordingly.

THOMAS W. TRENCHARD, *Judge.* [L. S.]

Cumberland Quarter Sessions.

THE STATE
vs.
URIAH S. LEE, FRANK B. LEE and HARRY SUTTON.

Sur Indictment for the Illegal Dredging of Oysters and Grand Larceny.

To the Hon. Thomas W. Trenchard, Judge of the Court of Quarter Sessions of the County of Cumberland:

Uriah S. Lee, Frank B. Lee and Harry Sutton, the defendants in the above entitled cause, respectfully petition that the entire
140 record in the above entitled cause be returned to the Supreme Court of the State of New Jersey, with the writ of error heretofore sued out of the said Court as a part of the return of the said writ.

JAS. BOYD POTTER,
J. W. ACTON,
Attorneys for Defendants.

Cumberland County Quarter Sessions.

THE STATE
vs.
URIAH S. LEE, FRANK B. LEE and HARRY SUTTON.

Sur Indictment for the Illegal Dredging of Oysters and Grand Larceny.

To the Justices of the Supreme Court of the State of New Jersey:

Application being made to me for that purpose by Jas. Boyd Potter and Jonathan W. Acton, of counsel with the defendants, I do certify that the above is the entire record of the proceedings had before the Court of Quarter Sessions in and for the county of Cumberland on the trial of the above entitled cause.

THOMAS W. TRENCHARD, *Judge.* [L. S.]

141 New Jersey Supreme Court.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE and HARRY SUTTON, Plaintiffs in Error.

In Error to the Cumberland County Court of Quarter Sessions.

Assignments of Error.

Afterwards, that is to say, on the third Tuesday of June, in the year of our Lord one thousand nine hundred and three, the June term of said court, comes the said defendants, Uriah S. Lee, Frank B. Lee and Harry Sutton, by Jonathan W. Acton, their attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in the giving of the verdict and judgment aforesaid, there is manifest error in this, to wit:

First. That the judgment was given against the plaintiff in error, whereas under the law of the land, and upon the evidence, the judgment should have been given and rendered in favor of the said plaintiff in error.

Second. That the record shows that the verdict of the jury was that of guilty in manner and form as charged in the first count of the said indictment of illegal dredging and not guilty of grand larceny.

Third. That the sentence imposed upon the defendants was contrary to law.

Fourth. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties
142 aforesaid, permitted a witness, Edward Allen, to be asked the following question: "There may have been oysters there and "you not have seen them," and therein erred.

Fifth. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, permitted a witness, Edward Allen, to be asked the following question, "There were 3,000 bushels of spring planting and 460 "bushels of Chesapeakes on your ground at that time" and therein erred.

Sixth. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, permitted a witness, Edward Allen, to be asked the following question, "Did you find them there at that time," and therein erred.

Seventh. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, permitted a witness, Joseph Hilton, to be asked the following question, "You are not much of a talker," and permitted the witness to answer thereto matters irrelevant to the said issue, and therein erred.

Eighth. That the said Court before whom, etc., at and upon the

aforesaid trial of the said issue so joined between the parties aforesaid, permitted a witness, Joseph Hilton, to be asked the following question: "Why was Allen worried?" and therein erred.

Ninth. Because the evidence shows that Allen and not the State Oyster Commission, had marked, buoyed and staked up the oyster bed of Allen.

Tenth. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, permitted a witness, Joseph Hilton, to be asked the following question, "Did you have oysters on your ground," and therein erred.

143 Eleventh. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to permit a witness, Captain James Boyle, to answer the following question, "Isn't it the custom, Cap- "tain, among oystermen in the fall to go and cut the tops off the "stakes?" and therein erred.

Twelfth. That the said Court erred before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to permit a witness, Captain James Boyle, to answer the following question, "Now, don't answer this question until "it is passed upon, Captain; isn't there a much greater likelihood "of the ice tearing out a stake which has not been cut than one "which has been?" and therein erred.

Thirteenth. That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to permit a witness, Captain James Boyle, to answer the following question, "What conversation, if any, did you "have relative to that ground? You say that ground was marked; "can you point out on the map the location of that ground," and therein erred.

Fourteenth. There is a manifest error in this, to wit: That the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, permitted the Prosecutor of the Pleas, against the objection of the defendants, to state to the jury as follows: "There "might be evidence in this case to lead the jury to believe that these "defendants might be the same parties who stole those oysters," and therein erred.

Fifteenth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue joined between the parties aforesaid, and after the evidence was closed, charged and instructed the said jury among other

144 things as follows: "Under this indictment it will be lawful "for you to render a verdict that the defendants are not "guilty, or that some of them are not guilty, and some of them "are guilty, or that all are guilty. And as to those whom you find "guilty it will be lawful for you to find some guilty of illegal "dredging, as charged in the first count of the indictment, and "some guilty of larceny, or that they are all guilty of larceny, or "all guilty of illegal dredging," and therein erred.

Sixteenth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, charged and instructed the said jury among other things as follows: "But by reasonable doubt is not meant a hesitation of the "mind to accept proofs because of a mere possibility of error," and therein erred.

Seventeenth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, charged and instructed the said jury among other things as follows: "Now if these facts which I have just adverted to are found "by you, if it is found by you that on the day charged in the indict- "ment the ground in question was duly marked, buoyed or staked "up and in the possession of the lessee, Mr. Allen, it then remains "to be considered whether or not the defendants on that day, "dredged or threw, took or cast a dredge or other instrument used "for the purpose of catching oysters upon that ground. If you "find that they did, then they should be convicted of illegal dredg- "ing as charged in the first count of the indictment," and therein erred.

Eighteenth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence
145 was closed, charged and instructed the jury among other things as follows: "Now, gentlemen, if you believe that testi- "mony, if you believe that occurred as these witnesses for the State "say it occurred, then, regardless of whether or not they got any "oysters, if they were throwing their dredges there upon that ground "they should be convicted under the first count of the indictment," and therein erred.

Nineteenth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, charged and instructed the jury among other things as follows: "And in endeavoring to ascertain the truth from this con- "flicting testimony, it is but the dictate of common sense that you "should consider whether any of the witnesses have a motive to "testify falsely," and therein erred.

Twentieth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, charged and instructed the said jury among other things as follows: "There may be other circumstances which throw more or "less light upon the character of the transactions of the defendants "while in the neighborhood of the ground, such as the movements "of the vessel of the defendants down the bay ahead of the Golden "Light," and therein erred.

Twenty-first. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was

closed, charged and instructed the jury among other things as follows: "I repeat, if you are satisfied that the defendants dredged "there, that they threw their dredges there, they should be convicted "of illegal dredging independent of any conclusion you reach as to "whether or not they caught oysters," and therein erred.

146 Twenty-second. That the Court erred in charging and instructing the jury that the defendants could under the indictment and the evidence submitted to the jury, be convicted of petit larceny.

Twenty-third. That the Court erred in not instructing the jury that in order to convict under the first count of the indictment an intent to take and catch oysters must be shown and proved.

Twenty-fourth. That there was no evidence submitted to the jury to show that there had been any larceny of the oysters of Allen by the defendants.

Twenty-fifth. That the Court failed to define to the jury the distinction between grand and petit larceny.

Twenty-sixth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, the said defendants requested the Court to charge and instruct the jury as follows: "I respectfully ask the Court to direct an ac- "quittal, because it has not been shown that the stakes or monu- "ments set on the Allen lot were set at the corners or on the "boundaries thereof as indicated on the map, or had been set there "by order of the Oyster Commission," and the said Court, having refused to so charge, therein erred.

Twenty-seventh. There is manifest error in this, that said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, the said defendants requested the said Court in writing to charge and instruct the jury as follows: "Because the ground claimed "by Allen was not duly marked so as to be easily located and because "the proofs show that the stakes or monuments thereon January "29, 1903, were not set under the supervision of the State Oyster "Commission," and the said Court, having refused to so charge, therein erred.

147 Twenty-eighth. There is manifest error in this, that the said Court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, the said defendants requested the said Court in writing to charge and instruct the jury as follows: "It has not "been proven that any oysters were taken by the defendants from "the beds of Allen or that Allen lost any oysters, or the value "thereof," and the said Court having refused to so charge therein erred.

Twenty-ninth. That the Court erred in not charging the jury more specifically in respect to the law and the weighing and rejection of evidence.

Thirtieth. That the verdict of the jury is wholly contrary to the weight and preponderance of the testimony.

Thirty-first. That the statute under which the first count of the indictment is framed is unconstitutional.

Thirty-second. Because the said Court in charging the jury and reviewing the evidence, gave undue prominence to the testimony of the State's witnesses, and gave but meagre comment to the testimony of the witnesses for the defendants.

Therefore, the said defendants pray that the judgment and conviction aforesaid, by reason of the aforesaid errors and all other errors appearing in the record and proceedings aforesaid, may be reversed, annulled and held for nothing, and that the said Uriah S. Lee, Frank B. Lee and Harry Sutton may be restored to all things that they have lost on the occasion of said judgment and conviction, and that the said State of New Jersey may rejoin to said errors.

Attorneys for Plaintiffs in Error.

148 New Jersey Supreme Court.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE, HARRY SUTTON, Plaintiffs in Error.

Sur Indictment.

Joinder in Error.

And now comes the defendant in error, and says that there is no error in the record and proceedings aforesaid, or in giving judgment aforesaid; and, therefore, it prays that the said judgment may be affirmed, and that its costs may be adjudged to it, &c.

J. HAMPTON FITHIAN,
Attorney of Defendant in Error.

149 New Jersey Supreme Court, February Term, 1904.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE and HARRY SUTTON, Plaintiffs in Error.

In Error.

Affirmance and Remittitur.

The Court having heard the argument of counsel, and inspected the judgment and proceedings removed by the Writ of Error in this cause, and duly considered the causes assigned for error,

It is ordered that said judgment be affirmed, and that said cause be remitted to the Cumberland County Court of Quarter Sessions to be proceeded in according to law.

Entered February 24, 1904.

On motion of

J. HAMPTON FITHIAN, *Pros., Etc.*

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in the above stated cause and entered in the minutes thereof.

In testimony whereof, I have set my hand and seal of said Court at Trenton this sixteenth day of March, A. D. nineteen hundred and four.

[L. S.] WILLIAM RIKER, JR., *Clerk.*

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151 STATE OF NEW JERSEY:

Court of Errors and Appeals, Nov'r Term, 1904.

In Error.

STATE
and
URIAH S. LEE ET ALS.

No. 1 of Nov'r Term, 1904.

Date, 20 JAN'Y, 1905.

Chancellor presiding.
On opinion J. Dixon in Sup. Ct.

Check list.	Affirm.	Rever'l.
The Chancellor	1	
Mr. Justice Garrison	1	
" " Fort	1	
" " Garretson	1	
" " Pitney	1	
" " Reed	1	
Judge Bogert	1	
" Vredenburgh	1	
" Voorhees	1	
" Vroom	1	
" Green	1	
" Gray	1	
Totals	11	0

W. J. M.

" Filed Jan. 20, 1905.
S. D. DICKINSON, *Clerk.*

152 New Jersey Court of Errors and Appeals.

No. 1.

THE STATE, Defendant in Error,
v.
URIAH S. LEE ET ALS., Plaintiffs in Error.

Argued at November Term, 1904.

Mr. James B. Potter and Mr. Jonathan W. Acton for plaintiffs in error,

Mr. J. Hampton Fithian and Mr. Walter H. Bacon for defendant in error.

Per curiam:

The judgment brought up by this writ of error must be affirmed on the grounds stated in the opinion of Mr. Justice Dixon in the Supreme Court, reported in 57 Atlantic Reporter, page 142.

"Filed Jan. 20 1905.
S. D. DICKINSON, *Clerk.*"

153 STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, and *ex-officio* Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby Certify that the foregoing is a true copy of an opinion read by said Court in the above-stated cause, March Term, 1905, as the same is taken from and compared with the original now remaining on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Sixteenth day of Jan. A. D. 1906.

[Seal of the Secretary of the State of New Jersey.]

S. D. DICKINSON,
Secretary of State.

154 [Endorsed:] New Jersey Court of Errors and Appeals. March Term, 1905. Between The State, def't in error *v.* Uriah S. Lee *et als.* pl'tffs in error. Opinion. *Per curiam.*

155 New Jersey Court of Errors and Appeals, November Term, 1904.

Between

STATE OF NEW JERSEY, Defendant in Error,

vs.

URIAH S. LEE, FRANK LEE and HARRY SUTTON, Plaintiffs in Error.

In Error to Supreme Court.

Order on Affirmance of Judgment.

This cause having been duly argued at the November Term, 1904 of this court by James S. Buchanan of counsel for the plaintiff- in error, and Walter H. Bacon & J. Hampton Fithian of counsel for the defendant in error, and the court having considered the same, and finding no error in the record or proceedings in the Supreme court—

It is thereupon, on this Twentieth day of January in the year of our Lord one thousand nine hundred and five ordered and adjudged that the judgment of the Supreme Court, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

J. HAMPTON FITHIAN,
Attorney of Defendant in Error.

156 [Endorsed:] New Jersey Court of Errors and Appeals. November Term, 1904. In Error to Supreme Court. State of New Jersey, Def't in Error, *vs.* Uriah S. Lee, *et al* Pl't'fs in Error. Order Affirming Judgment. J. Hampton Fithian, Att'y. Filed January 23 1905. S. D. Dickinson, Clerk.

Department of State.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, and *ex-officio* Clerk of the Court of Errors and Appeals in the Last Resort in all Causes, *do hereby certify*, that the foregoing is a true copy of an order made by said Court in the above stated cause, dated January Twentieth 1905, as the same is taken from and compared with the Minutes of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal, at Trenton, this Twenty-fourth day of January A. D. 1905.

[SEAL.]

S. D. DICKINSON,
Secretary of State.

157 New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE and HARRY SUTTON, Plaintiffs in Error.

On Error to Supreme Court.

The humble petition of Uriah S. Lee, Frank B. Lee and Harry Sutton, of Leesburg, in the county of Cumberland and state of New Jersey, respectfully represent that they are citizens of the United States and citizens of the State of New Jersey; that on or about the twenty third day of January, A. D. one thousand nine hundred and five judgment final was rendered in the New Jersey Court of Errors and Appeals, which is the Court of last Resort in all cases, both at law and in equity, and the highest Court of law and equity of the state of New Jersey, in which a decision could be had in the above stated suit; that the said suit was upon an indictment found by the Grand Jury of the county of Cumberland, in the state of New Jersey, against these petitioners as defendants in the Court of Oyer and Terminer of the county of Cumberland, at the May Term in the year nineteen hundred and three, filed May sixth, nineteen hundred and three; that the said indictment against these defendants was alleged to be for violation of an act of the legislature of the state of New Jersey entitled, "An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River Cove in the state of New Jersey," approved March 24th, A. D. 1899, and amended March 22d, 1901, and the offense complained of
158 was casting a dredge from a vessel in the tidal waters of the Delaware Bay and Maurice River Cove, and for the larceny of oysters; that a trial of said cause was held in the Cumberland County Courts of the state of New Jersey, and on the fifteenth day of May, nineteen hundred and three the defendants were convicted of casting the dredge but were acquitted of larceny of any oysters, and on the eighteenth day of May, nineteen hundred and three your petitioner, Uriah S. Lee was by the sentence and judgment of the Cumberland County Court sentenced to be confined in the State Prison at Trenton, New Jersey, for the term of one year at hard labor, and pay a fine of two hundred dollars and from thence until the costs of prosecution are paid; and your petitioner, Frank B. Lee, be confined in the State Prison at Trenton, New Jersey, for the term of seven months, at hard labor, and pay a fine of fifty dollars, and from thence until the costs of prosecution are paid, and your petitioner, Harry Sutton be confined in the State Prison at Trenton New Jersey for the term of seven months, at hard labor, and pay a fine of fifty dollars, and from thence until the costs of prosecution are paid.

That your petitioners sued out a writ of error from the Supreme Court of the State of New Jersey on the twenty sixth day of Febru-

ary, A. D. nineteen hundred and four, according to the rules and practice of the state of New Jersey, removing said judgment into said Court, which removed all the records and proceedings into said Court, in which said Court the constitutionality of the act of the legislature and the conviction of your petitioners, as well as other alleged illegality in the record and proceedings aforesaid, were raised; and the said Supreme Court declined to entertain and
159 consider such grounds of unconstitutionality, holding that the consideration of such grounds were precluded in that Court by other decisions of that Court; and thereupon, on the twenty fourth day of February, A. D. nineteen hundred and four, affirmed the said judgment.

Whereupon your petitioners, on the twenty sixth day of February, A. D. nineteen hundred and four, sued out of the said Court of Errors and Appeals of the state of New Jersey, the aforesaid writ of error, directed to the New Jersey Supreme Court, removing said judgment to said Court, alleging, among other reasons for the reversal of said judgment of the said Supreme Court, and the judgment of the Cumberland County Court, that the decision of the Supreme Court of the State of New Jersey that the act of the legislature and the proceedings thereunder were not in conflict with the Constitution of the United States, was erroneous, illegal and void, and ought to be reversed, and claiming that the said act of the legislature, the proceedings thereunder and the conviction of your petitioners was in violation of the fourteenth amendment of (article fourteen amending) the Constitution of the United States, in that the said recited act of the legislature and the enforcement thereof abridged the privileges and immunities of the petitioners as citizens of the United States and deprived your petitioners of liberty without due process of the law and denied to your petitioners, persons within the jurisdiction of the said State, the equal protection of the laws; and under the eighth section of article one of the Constitution of the United States; and that the proceedings had and taken under said statute, and the said statute, were in conflict with section two of article three of the Constitution of the United States, which extends jurisdiction of the United States, and the Courts thereof, in all matters of admiralty and maritime.

160 And your petitioners further show that their rights as citizens of the United States and their liberty by the proceedings aforesaid are put in jeopardy, without due process of law, in that the said act of the legislature purported to authorize the setting apart of a part of lands covered by the navigable tide waters of the Delaware Bay, which are wholly within the jurisdiction and control of the United States by the provisions of the Constitution thereof, to certain individuals, a distinctive class, and denying to others, the citizens of the state of New Jersey and of the United States, equal privileges and immunities, contrary to section two, article four of the Constitution of the United States, and also purported to make it a crime to cast dredges from vessels sailing in said waters, over such lands, so buoyed and marked under the provisions of said Act by or under

authority of the State Oyster Commission, constituted by the said act.

That your petitioners caused it to be argued to and urged upon the said New Jersey Court of Errors and Appeals that the said act of the legislature and the said proceedings aforesaid against your petitioners and the judgment rendered against them and the sentence of the law pronounced thereon, were absolutely contrary to the Constitution of the United States and in violation of the rights of your petitioners as citizens of the United States, but that the said Court by its judgment, rendered on the twenty third day of January, nineteen hundred and five, decided against the privilege and exemption claimed by your petitioners under the Constitution of the United States, so set up and alleged in said Court, and in all things affirmed the judgment of the Supreme Court, aforesaid.

The said New Jersey Court of Errors and Appeals being the highest Court in which such judgment could be rendered in the
161 State of New Jersey, and having decided that the judgment and sentence, so as aforesaid pronounced against your petitioners, was valid and effectual in law, and having decided that the petitioners were not entitled to the privilege and immunity claimed in and by virtue of the provisions of the Const'tution of the United States, hereinbefore set out, allege that your petitioners are aggrieved in that in the proceedings aforesaid the State of New Jersey has denied to them the privileges and immunities of the citizens of the several States, have abridged the privileges and immunities of your petitioners, citizens of the United States, and deprived your petitioners of liberty and property without due process of law, and denied to your petitioners, persons within its jurisdiction, the equal protection of the laws and assumed and exercised maritime and admiralty jurisdiction and unlawfully set apart and appropriated to one individual, to wit: Edward Allen, territory free and open to all the citizens of the United States; all of which will more fully and particularly appear in detail in the record to be presented herewith.

Your petitioners therefore pray that a writ of error may issue from the Supreme Court of the United States, directed to the New Jersey Court of Errors and Appeals, removing the judgment and proceedings aforesaid, that there may be done thereon what according to the Constitution of the United States of America and the laws of the land ought to be done, and that your petitioners may have such other relief as may be proper.

And your petitioners will ever pray &c.

URIAH S. LEE,
FRANK B. LEE,
HARRY SUTTON,
By WM. T. READ,
Attorney.

162 DISTRICT OF COLUMBIA, *ss:*

William T. Read, of full age, being duly sworn according to law, on his oath says, that he is attorney at law in the State of New Jersey, and that he is attorney for Uriah S. Lee, Frank B. Lee and Harry

Sutton, petitioners above-named, and that the matters and things stated and set out in the said petition are true to the best of his knowledge and belief.

WM. T. READ.

[Seal Benjamin Vail, Notary Public, District of Columbia.]

Sworn — and subscribed this 28th day of January, A. D. 1905, before me.

BENJ. VAIL,
Notary Public

163 Know all men by these presents, That we, Uriah S. Lee, Frank B. Lee and Harry Sutton as principals, and Dan Lee and John Sharpless, as sureties, are held and firmly bound unto The State of New Jersey in the full and just sum of Five Hundred dollars, to be paid to the said State of New Jersey or its certain attorney, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-eighth day of January, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a session of the New Jersey Court of Errors and Appeals in a suit depending in said Court, between The State of New Jersey defendant in error, and Uriah S. Lee, Frank B. Lee and Harry Sutton, plaintiffs in error, on a writ of error to the New Jersey Supreme Court, final judgment was rendered against the said Uriah S. Lee, Frank B. Lee and Harry Sutton and the said Uriah S. Lee, Frank B. Lee and Harry Sutton having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said, The State of New Jersey citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Know, the condition of the above obligation is such, that if the said Uriah S. Lee, Frank B. Lee and Harry Sutton shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

URIAH S. LEE. [L. S.]
FRANK B. LEE. [L. S.]
HARRY SUTTON. [L. S.]
DAN LEE. [L. S.]
JOHN SHARPLESS. [L. S.]

Sealed and delivered in presence of—
E. A. ARMSTRONG.
WM. T. REED.

Approved by—
M. B. BROWN,
Associate Justice of the Supreme Court of the United States.

164 STATE OF NEW JERSEY, *Camden County, ss:*

Dan Lee and John Sharpless of Leesburg, in the County of Cumberland and State of New Jersey, each being duly sworn according to law, each upon his oath says: that he is a Surety in the foregoing bond made by Uriah S. Lee, Frank B. Lee and Harry Sutton as principals and Dan Lee and John Sharpless as sureties to the State of New Jersey, for the sum of Five hundred dollars, bearing date the Twenty-eighth day of January, A. D. Nineteen hundred and five, that the said bond was signed by them; that they are freeholders of the State of New Jersey and are each worth in clear estate, after all their just debts are paid, more than the sum of five hundred dollars.

DAN LEE.
JOHN SHARPLESS.

Sworn — and subscribed before me this Thirtieth day of January, A. D. 1905.

WILLARD MORGAN,
[L. S.] *N. J. Com'r Deeds of N. J.*

Endorsed: Filed Jan. 31 1905 S. D. Dickinson Clerk A True Copy S. D. Dickinson Sec'y of State.

165 [Endorsed:] New Jersey Court of Errors and Appeals The State of New Jersey, def't in Error, *vs.* Uriah S. Lee, Frank B. Lee and Harry Sutton, Pl'ffs in Error Bond.

166 New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY, Defendant in Error,
vs.
URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error.

Assignments of Error.

Now come the said Uriah S. Lee, Frank B. Lee and Harry Sutton, defendants, the Plaintiffs in error herein, and respectfully submit and show to the Court that in the record, proceedings, decision and final judgment of the Court of Errors and Appeals of the State of New Jersey in the above stated cause, manifest error hath intervened to the great hurt and damage to the defendants, the plaintiffs in error herein, as follows, to wit—

First. The Court erred in holding that the act of the Legislature of the State of New Jersey, being Chapter 194 of the Laws of 1899 entitled "An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey," Approved March twenty-fourth, 1899, and the act of the Legislature of the State of New Jersey, being Chapter 149 of the Laws of 1901, entitled "An Act to amend an act entitled 'An act for the better regulation and control of the taking, planting and

cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act and to extend the provisions of said act to the lands lying under the
167 tidal waters of the Delaware River," approved March twenty-second, 1901, were not in conflict with the constitution of the United States.

Second. The Court erred in holding that the act of the Legislature of the State of New Jersey, being Chapter 194 of the Laws of 1899 entitled "An Act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey," approved March twenty-fourth, 1899, and the act of the Legislature of the State of New Jersey, being Chapter 149 of the Laws of 1901, entitled "An Act to amend an act entitled 'An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware River," approved March twenty-second, 1901, were not in conflict with the constitution of the State of New Jersey.

Third. The Court erred in holding that the provisions of said acts of the Legislature of the State of New Jersey are not in conflict with and in violation of the Constitution of the United States and Article Fourteen amending the Constitution, for that the State of New Jersey, by and through the provisions of said Acts of the Legislature assumes and seeks (1) to deprive the plaintiffs in error and certain other citizens of the United States and of the State of New Jersey of rights, privileges and immunities secured to other citizens of the United States and of the said State; (2) to deprive the plaintiffs in error and other citizens of the United States of liberty and property without due process of law; (3) to deprive and to
168 deny to the plaintiffs in error and certain citizens and persons within the jurisdiction of the State of New Jersey, the equal protection of the law.

Fourth. The Court erred in holding that by the provisions of said acts the plaintiffs in error *is* not deprived of rights, privileges and immunities secured to other citizens of the United States and of the State of New Jersey by the Federal Constitution and laws of the United States.

Fifth. The Court erred in holding that by the provisions of said acts, the plaintiffs in error are not deprived of liberty and property without due process of law.

Sixth. The Court erred in holding that the provisions of said acts do not deny to the plaintiffs in error the equal protection of the law.

Seventh. The Court erred in holding that the said acts and the

authority exercised thereunder and thereby authorized to be exercised thereunder are within the powers of the legislature of the State of New Jersey.

Eighth. The Court erred in holding that the said acts do not grant special and exclusive privileges to certain citizens which it denies to the plaintiffs in error and to other citizens of the state.

Ninth. The Court erred in ordering judgment to be entered and in entering judgment affirming the judgment of the Court below.

Tenth. The Court erred in holding that the provisions of said acts are not in violation of section 8, Article 1 of the Constitution of the United States, which confers on Congress the exclusive power to regulate commerce among the several states.

169 Eleventh. The Court erred in holding that the provisions of said acts do not deprive the plaintiffs in error of the right to earn a livelihood in the pursuit of a lawful and harmless occupation and of personal liberty in reference to said business.

Twelfth. The Court erred in holding that the provisions of said act are uniform in their operation throughout the state upon all citizens of the State similarly situated.

Thirteenth. The Court erred in holding that the provisions of said act do not unlawfully discriminate between those engaged in dredging oysters in Delaware Bay and Maurice River Cove and those engaged in dredging oysters in other tide waters bordering on the said State of New Jersey.

Fourteenth. The Court erred in holding the provisions of the said act *for*bidding the plaintiffs in error to take a dredge upon grounds leased by another not to be an abridgment of the inalienable and constitutional rights of the plaintiffs in error to pursue a lawful avocation in a lawful way without interference by the State.

Fifteenth. The Court erred in holding that the judgment should not be reversed for the several causes and reasons specified in the assignments of error filed in the said cause in the Supreme Court of the State of New Jersey and in not sustaining said allegations of error and each of them.

Sixteenth. The Court erred in holding that the said judgment should be affirmed notwithstanding the reasons filed in the Court of Errors and Appeals and each and every of them and did not entitle the Plaintiffs in error to a reversal of the judgment below.

Seventeenth. The Court erred in holding that upon the whole case there was sufficient to support a conviction of the plaintiffs in error.

170 Eighteenth. The Court erred in not reversing the judgment of conviction found against the plaintiffs in error upon the whole record and proceedings.

Nineteenth. The Court erred in holding that there was any jurisdiction whatever obtained over the plaintiffs in error by indictments, steps and proceedings sought to be reviewed and in not holding that the plaintiffs in error were being deprived of their liberty and property without due process of law.

Twentieth. The Court erred in determining that the State of New Jersey, defendant in error, was entitled to judgment against Uriah

S. Lee, Frank B. Lee and Harry Sutton, the defendants and the plaintiffs in error.

Twenty-first. The Court erred in awarding judgment in favor of the State of New Jersey, the defendant in error, and against Uriah S. Lee, Frank S. Lee and Harry Sutton, defendants, the Plaintiffs in error and affirming the judgment below.

Twenty-second. The Court erred in affirming the judgment below when according to the constitution of the United States, of the State of New Jersey and the law of the land, the said judgment of the Court below ought to have been reversed, annulled and altogether held for nothing and judgment ought to have been given for the plaintiffs in error against the defendant in error.

Twenty-third. The Court erred in divers other ways and manner to the great injury, damage, and detriment of the plaintiffs in error, of their liberty and property.

And the said plaintiffs in error pray that the judgment aforesaid may be reversed, annulled and altogether for nothing held and that they may be restored to all things which they have lost by
171 occasion of said judgment &c.

E. A. ARMSTRONG,
Attorney for and of Counsel with Plaintiffs in Error.

172 [Endorsed:] New Jersey Court of Errors and Appeals. The State of New Jersey, Def't in Error, *vs.* Uriah S. Lee, Frank B. Lee and Harry Sutton, Pl't'ffs in Error. Assignments of Error. E. A. Armstrong, Wm. T. Read, Att'ys.

173 Supreme Court of the United States.

URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error,

vs.

STATE OF NEW JERSEY, Defendant in Error.

In Error to the New Jersey Court of Errors and Appeals.

Service is hereby acknowledged on this 31st day of January, in the year nineteen hundred and five, of the Citation in the above stated cause bearing date the Twenty-eighth day of January, in the year nineteen hundred and five, for the defendant in error, the State of New Jersey.

ROBERT H. McCARTER,
Attorney General of the State of New Jersey.

174 [Endorsed:] Supreme Court of the United States. Uriah S. Lee, Frank B. Lee and Harry Sutton, Pl't'ffs in Error, *vs.* State of New Jersey, Def't in Error. In Error to the New Jersey Court of Errors and Appeals. E. A. Armstrong, Att'y.

175 Supreme Court of the United States.

URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error,
vs.
STATE OF NEW JERSEY, Defendant in Error.

In Error to the New Jersey Court of Errors and Appeals.

Service is hereby acknowledged on this thirty-first day of January, in the year nineteen hundred and five, of the Citation in the above stated cause, bearing date the Twenty-eighth day of January, in the year nineteen hundred and five, for the defendant in error, the State of New Jersey.

J. HAMPTON FITHIAN,
Prosecutor of the Pleas.

176 [Endorsed:] Supreme Court of the United States. Uriah S. Lee, Frank B. Lee, and Harry Sutton, Pl'ff's in Error, *vs.* State of New Jersey, Def't in Error. In Error to the New Jersey Court of Errors and Appeals. E. A. Armstrong, Att'y.

177 Supreme Court of the United States.

URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error,
vs.
STATE OF NEW JERSEY, Defendant in Error.

In Error to the New Jersey Court of Errors and Appeals.

Service is hereby acknowledged on this thirty-first day of January, in the year nineteen hundred and five, of the Writ of Error in the above stated cause bearing date the Twenty-eighth day of January, in the year nineteen hundred and five, for the defendant in error, the State of New Jersey.

J. HAMPTON FITHIAN,
Prosecutor of the Pleas.

178 [Endorsed:] Supreme Court of the United States. Uriah S. Lee, Frank B. Lee and Harry Sutton, Pl'ff's in Error *vs.* State of New Jersey, Def't in Error. In Error to the New Jersey Court of Errors and Appeals. E. A. Armstrong, Att'y.

179 Supreme Court of the United States.

URIAH S. LEE, FRANK B. LEE, and HARRY SUTTON, Plaintiffs in Error,

vs.

STATE OF NEW JERSEY, Defendant in Error.

In Error to the New Jersey Court of Errors and Appeals.

Service is hereby acknowledged on this 31st day of January, in the year nineteen hundred and five, of the Writ of Error in the above stated cause bearing date the Twenty-eighth day of January, in the year nineteen hundred and five, for the defendant in error, the State of New Jersey.

ROBERT H. McCARTER,
Attorney General of the State of New Jersey.

180 [Endorsed:] Supreme Court of the United States. Uriah S. Lee, Frank B. Lee and Harry Sutton, Pl'tffs in Error, *vs.* State of New Jersey, Def't in Error. In Error to the New Jersey Court of Errors and Appeals. E. A. Armstrong, Att'y.

181 UNITED STATES OF AMERICA, *ss:*

To The State of New Jersey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Errors and Appeals of the State of New Jersey wherein Uriah S. Lee, Frank B. Lee, and Harry Sutton are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry B. Brown, Associate Justice of the Supreme Court of the United States, this 28th day of January, in the year of our Lord one thousand nine hundred and five.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

182 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Errors and Appeals of the State of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of New Jersey

and Uriah S. Lee, Frank B. Lee and Henry Sutton, defendants wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,
183 or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Uriah S. Lee, Frank B. Lee and Henry Sutton as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of January, in the year of our Lord one thousand nine hundred and five (1905).

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

184 The answer of the Judges of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

W. J. MAGIE,
Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in all Causes in New Jersey.

185

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State of the State of New Jersey and *Ex-Officio* Clerk of the Court of Errors and Appeals in the last resort in all causes in and for the State of New Jersey, do hereby certify that the foregoing is a full, true and complete copy of the record in the case of State of New Jersey, Deft. in Error, *vs.* Uriah S. Lee, Frank B. Lee & Harry Sutton, Pltffs. in Error, in Error to the New Jersey Supreme Court, and of the Vote of the Court, Opinion, Final decree, Petition, Bond, Assignment of Error, four acknowledgment of services, and citation, and all proceedings in the cause, as the same remain on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said Court this the sixteenth day of January A. D. 1906.

[Seal of the Secretary of the State of New Jersey.]

S. D. DICKINSON, *Clerk.*

Endorsed on cover: File No. 20,053. New Jersey court of errors and appeals. Term No. 185. Uriah S. Lee, Frank B. Lee and Harry Sutton, plaintiffs in error, *vs.* The State of New Jersey. Filed January 18th, 1906. File No. 20,053.

Office Supreme Court U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted]16.

URIAH S. LEE ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

MOTION TO ADVANCE.

ROBERT H. MCCARTER,
Attorney General of New Jersey,
Counsel for Defendant in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23010

(20,053.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 185.

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON, PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY, DEFENDANT IN ERROR.

STATEMENT AND REASONS ON MOTION TO ADVANCE.

The plaintiffs in error in this cause were convicted at the May term, 1903, of the court of quarter sessions of the county of Cumberland, in the State of New Jersey, of dredging for oysters in violation of the provisions of an act of the legislature of the State of New Jersey entitled "An act for the better regulation and controlling of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River cove, in the State of New Jersey," approved March 24, 1899, and the acts amendatory thereof and supplementary thereto; that a writ of error reviewing said conviction was duly taken to the supreme court of the State of New Jersey, in which court

said judgment of the court of quarter sessions of the said county of Cumberland was duly affirmed, and thereupon on the 26th day of February, 1894, the said plaintiffs in error removed said judgment from the said supreme court into the court of errors and appeals of the said State of New Jersey, being the court of last resort of said State; that upon argument of the said cause before the said court of errors and appeals, at the November term of said court, in the year 1904, the judgment of the said supreme court affirming the judgment of the said court of quarter sessions of the said county of Cumberland was duly affirmed, and thereupon the said plaintiffs in error did, on the 29th day of January, 1905, procure a writ of error from this court removing the said judgment of conviction into this court for review.

It is respectfully urged that this cause should be advanced for argument for the following

REASONS.

1. This appeal is based upon the alleged unconstitutionality of the act of the legislature of New Jersey under which the conviction was had, which act regulates and controls the taking, planting, and cultivating of oysters in the lands lying under the tidal waters of the State of New Jersey, and therefore it is of the utmost importance to said State that any question as to its constitutionality should be speedily passed upon, in order to properly protect the interests of the State in the said oyster lands.

2. The alleged Federal question involved in this cause is that the said act of the legislature of the State of New Jersey is unconstitutional, because the same is alleged to be in

violation of the 14th amendment of the Federal Constitution, in that it restricts the taking of oysters to certain lessees or licensees who obtain such leases or licenses from the commission therein created, the said commission being restricted in the issuance of such licenses to persons who have been residents of the State of New Jersey for at least twelve months next preceding their application, which question has been directly passed upon by this court in the case of McCready *vs.* Virginia, 94 U. S., 391.

3. That the speedy determination of this appeal is necessary for the proper enforcement of the criminal laws of the said State of New Jersey.

All of which is respectfully submitted.

ROBERT H. MCCARTER,
Attorney General of the State of New Jersey.

UNITED STATES SUPREME COURT.

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON, *Plaintiffs in Error,*
vs.
THE STATE OF NEW JERSEY, *Defendant in Error.*

ON WRIT OF ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

J. HAMPTON FITHIAN, of full age, being duly sworn according to law, on his oath deposeth and saith that he is the prosecutor of the pleas of the county of Cumberland, in the State of New Jersey; that the plaintiffs in error in the above-entitled cause were at the May term, 1903, of the court

of quarter sessions of the said county of Cumberland, in the State of New Jersey, indicted by the grand jury of the said county of Cumberland upon the charge of dredging for oysters upon an indictment containing two counts, the first count charging in effect that the plaintiffs in error did dredge for oysters upon a certain oyster bed or ground which had been leased by the State oyster commission by virtue of the provisions of an act of the legislature of the State of New Jersey entitled "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware bay and Maurice River cove in the State of New Jersey," approved March 24, 1899, and the acts amendatory thereof, to one Edward Allen without the permission of the said Edward Allen; and the second count of said indictment charging the defendants with the larceny of fifty baskets of oysters of the value of fifty dollars of the goods and chattels of the said Edward Allen; that upon the trial of said indictment before the said court of quarter sessions on the 14th day of May, in the year 1903, the plaintiffs in error were convicted and were sentenced, the said Uriah S. Lee to imprisonment for one year and to pay a fine of two hundred dollars and costs, the said Frank B. Lee to imprisonment for seven months and to pay a fine of fifty dollars and costs, and the said Harry Sutton to imprisonment for seven months and to pay a fine of fifty dollars and costs; that on the 18th day of May, 1903, the said plaintiffs in error took a writ of error, removing the judgment against them from the said court of quarter sessions to the supreme court of the State of New Jersey, and that upon the argument of said cause before the said supreme court, at the February term, 1904, of said

court, the said judgment was affirmed, and that thereupon, on the 26th day of February, in the year 1904, the said plaintiffs in error removed the said judgment by writ of error from the Supreme Court into the court of errors and appeals of the State of New Jersey, and that upon argument of the said cause before the said court of errors and appeals, at the November term, 1904, of said court the judgment of the said supreme court was affirmed; and that thereupon the said plaintiffs in error did, by writ of error dated the 28th day of January, in the year 1905, remove said judgment of the court of errors and appeals of the State of New Jersey to this court for review.

And this deponent further saith that at the trial of the said indictment before the said court of quarter sessions no Federal question was raised by the plaintiffs in error; that upon the argument of the writ of error in the said cause before the supreme court of the State of New Jersey plaintiffs in error raised the question that the fifth section, as amended, of the statute upon which the said indictment was founded (Pamphlet Laws, 1901, page 310), providing that "the State oyster commission shall have power, and are hereby directed as hereinafter provided, to lease to applicants therefor any of the lands of the State under the tidal waters of the Delaware bay and Maurice River cove below the line running direct from the mouth of Straight creek to Cross Ledge lighthouse, and commonly known as the 'southwest line,' to be exclusively used and enjoyed by such lessee for the taking, planting and cultivating of oysters; *Provided, however*, That no lease or leases shall be hereafter granted to any person or persons who shall not be at the time of granting of said lease or leases and shall not have been for

twelve months next preceding, a citizen and actual resident of this State; but this restriction shall not apply to renewals of any lease or leases heretofore granted" was in violation of article XIV of the Federal Constitution, which provides that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside. No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States," and that no other Federal question was raised by plaintiffs in error at any stage of the proceedings in said cause in the courts of the State of New Jersey.

And this deponent further saith that the said Federal question so as aforesaid raised by the plaintiffs in error in this cause has, in the opinion of deponent, already been decided by the Supreme Court of the United States in the case of McCready *vs.* Virginia, 94 U. S., 391; and this deponent believes that this appeal now taken by writ of error out of this court is frivolous and is taken merely for the purpose of delay.

J. Hampton Fithian.

Sworn to and subscribed before me this 24th day of October, A. D. 1905.

George Hampton,
Master in Chancery of New Jersey.

SUPREME COURT OF THE UNITED STATES.

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON, *Plaintiffs in Error,*

vs.

THE STATE OF NEW JERSEY, *Defendant in Error.*

ON WRIT OF ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

NOTICE OF MOTION TO ADVANCE.

To E. AMBLER ARMSTRONG, Esq.,

Attorney of Plaintiffs in Error:

Take notice that I shall move before the Supreme Court of the United States, at the court-room of said court, in the city of Washington, in the District of Columbia, on Monday, the 1st day of October next, at eleven o'clock in the forenoon, to advance the above-entitled cause for argument, and that upon such motion I shall present to the court in support thereof the statement, reasons, and affidavit hereto annexed.

Respectfully,

ROBERT H. MCCARTER,

Attorney General of the State of New Jersey.

Dated SEPTEMBER 11, 1906.

[Endorsed:] United States Supreme Court. Uriah S. Lee, Frank B. Lee, and Harry Sutton, plaintiffs in error, *vs.* The State of New Jersey, defendant in error. On writ of error to New Jersey court of errors and appeals. Notice of motion to advance, statement, reasons, and affidavit. Robert

H. McCarter, attorney general of the State of New Jersey. Service of a copy of the within notice, statement, reasons and affidavit is hereby acknowledged this 13th day of September, 1906. E. A. Armstrong, attorney of Uriah S. Lee, Frank B. Lee, and Harry Sutton, plaintiffs in error.

[Endorsed:] File No. 20053. Supreme Court U. S., October term, 1906. Term No. 185. Uriah S. Lee *et al.*, pl'ffs in error, *vs.* The State of New Jersey. Motion to advance, notice and acceptance of service. Filed Sept. 15, 1906.

FILED
SEP 25 1906
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted]16.

URIAH S. LEE ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

ANSWER TO MOTION TO ADVANCE.

E. A. ARMSTRONG,
Attorney for Plaintiffs in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23123

(20,053.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 185.

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON,
PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY, DEFENDANT IN ERROR.

ON WRIT OF ERROR TO NEW JERSEY COURT OF ERRORS AND APPEALS.

ON MOTION TO ADVANCE. ANSWER.

To the application of the honorable the Attorney General of the State of New Jersey to advance for argument the above-stated cause, the defendants respectfully make answer that while they can make no objection, nor do they attempt so to do, to such advancing if in the opinion of this honorable court the importance of the case demands it, they respectfully submit that the statements of the reasons filed by the honorable the Attorney General do not embody all the points upon which, among other things, defendants rely for reversal of conviction in this cause.

The said defendants were indicted under the statute of the State of New Jersey named in the aforesaid reasons, and the indictment contains two counts—one for unlawfully dredging and the other for the larceny of oysters. They were acquitted upon the larceny count and convicted upon the other count, for unlawful dredging.

The provision of the statute is:

"Any person or persons who shall hereafter dredge upon or throw, take or cast his oyster dredge or any other instrument used for the purpose of catching oysters, upon any oyster bed or ground duly marked, buoyed or staked up within the waters of the Delaware river, Delaware bay and Maurice River cove, in this State, belonging to any other person, without the permission of the lessee or lessees thereof, shall be guilty of a misdemeanor and of the violation of the provisions of this act."

And, by virtue of the provisions of the act, the indictment, and the charge of the court in this cause, the defendants were permitted to be convicted if the jury believed *they sailed over and upon said staked ground* so covered by the aforesaid waters with their boat and vessel, if the same contained a dredge or other appliance for the taking of oysters; and that this was in contravention of the commerce and navigation clauses of the Constitution. The prohibition of the statute is such that, no matter how innocent and proper the sailing, it is violated should the defendant *take* any dredge or appliance on his vessel over these grounds. It might be necessary or convenient for him, with his vessel so equipped, to sail over this place, in which case the words of the statute are violated. This conviction was in accordance with the judge's charge; he instructed the jury that if "the defendants on that day dredged or threw, *took* or cast

a dredge or other instrument used for the purpose of catching oysters," &c.

"It is a familiar rule that a thing may be within the letter of the statute, and yet not within its spirit nor within the intention of its makers."

We contend that the section mentioned is contrary to the Constitution of the United States, in that it attempts to regulate commerce and navigation by stating what a person shall or shall not have upon his boat or vessel.

That it is contrary to the Constitution of the United States, because it tends to restrict a man in pursuing a lawful vocation in a lawful way without interference by the State, in that it is impossible for one having oyster lands to get upon them without crossing the lands of another; and he must needs take a dredge or other instrument with him, otherwise he could not catch the oysters on his own lands. He has a right to use the surface of navigable waters for navigating his craft, and any law which tends to restrict that right conflicts with the Constitution of the United States.

"In the clause of the Constitution of the United States which declares that 'Congress shall have power to regulate commerce with foreign nations and among the several States,' the word commerce comprehends navigation, and a power to regulate navigation is as expressly conferred as if that term had been added."

Githens vs. Ogden, 28 U. S., 1.

"Congress has the power to regulate the building and equipment of vessels in the United States, whether for foreign or interstate commerce."

United States vs. Jackson, Fed. Cas. No. 15,453.

"The title of the proprietor of lands on a navigable stream to the lands underneath is subject to the public right of navigation."

Canal Fund Com'rs vs. Kempshall, 26 Wend., 404.

"If a river or water-course be navigable in a legal sense, the use of the stream belongs to the public."

Morgan vs. King, 35 N. Y., 454.

Flanagan vs. Philadelphia, 43 Pa., 219.

"Where a stream is navigable in fact above tide water, the public have an easement or right of passage upon it as a highway."

Braxon vs. Bressler, 64 Ill., 488.

It is therefore plain to be seen that the matters and things contained in this case have not, as the honorable the Attorney General assumes, been prejudged by the court, but that there are vital and important matters necessary to be considered, to do which a writ of error was allowed by one of the justices of this court. The application seems to have assumed that the case was here largely as a matter of delay. We therefore beg leave to lay these matters before the court to correct any wrong impression that otherwise might be caused.

E. A. Armstrong,
Attorney for Plaintiffs in Error.

[Endorsed:] United States Supreme Court. Uriah S. Lee, Frank B. Lee, and Harry Sutton, plaintiffs in error, *vs.* The State of New Jersey, defendant in error. On writ of error to New Jersey court of errors and appeals. On motion to advance. Answer. E. A. Armstrong, att'y. Service of a copy hereof admitted. Robert H. McCarter, Attorney General.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 16.

URIAH S. LEE ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

BRIEF FOR THE PLAINTIFFS IN ERROR.

E. A. ARMSTRONG,
WILLIAM T. READ,
Counsel for the Plaintiffs in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.

(20,053.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 16.

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON

vs.

THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

BRIEF FOR THE PLAINTIFFS IN ERROR.

Statement.

A statute of the State of New Jersey has created an oyster commission with jurisdiction over the lands claimed to belong to the State beneath the waters flowed by the Delaware Bay; which act was approved March 24, 1899, and it is found in Pamphlet Laws of 1899, page 506. The act contains twenty-six sections. It is entitled: "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay, and Maurice River cove, in the State of New Jersey."

It provided in the first section for the appointment of an oyster commission, and that "all oyster grounds, lands and beds included within lands of the State of New Jersey under

the tidal waters of the Delaware Bay and Maurice River cove shall be under the exclusive regulation and control of the State Oyster Commission." It provides for the appointment, term of office, and the compensation of commissioners; and in the second section for the appointment of a superintendent, and the third section makes it the duty of the commission to have guard-boats and see that the oyster laws are enforced; the fourth fixes an office, and the fifth provides that the lands may be leased, and contains this provision, however: "*Provided, however,* That no lease or leases shall be granted to any person who shall not be at the time of granting of said lease or leases, and shall not have been for twelve months next preceding, a citizen and actual resident of this State." The eighth provides for the ascertaining of the bounds, &c., and all of the other sections relate simply to the matter of the working of the commission, except section 20.

This act was very considerably amended by an act approved March 22, 1901 (found in Pamphlet Laws of 1901, page 307), entitled "An act to amend an act entitled 'An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act, and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware River." Section 20 of the original act is section 22 of the amended act (found in said book, on page 317), reading as follows:

"22. Section twenty of the act to which this is a supplement be and the same is hereby amended so as to read as follows:

"20. Any person or persons who shall hereafter dredge upon or throw, take or cast his oyster dredge, or any other instrument used for the purpose of catching oysters, upon any oyster bed or ground duly marked, buoyed or staked

up within the waters of the Delaware River, Delaware Bay and Maurice River cove, in this State, belonging to any other person, without the permission of the lessee or lessees thereof, shall be guilty of a misdemeanor and of the violation of the provisions of this act."

The plaintiffs in error were indicted upon two counts, and tried in the Cumberland County Court of Quarter Sessions (see indictment, Case, page 13), one for the violation of this section 20 as amended and the other for larceny of oysters. Upon the trial they were convicted on the first count and acquitted on the second (see Case, page 17), and thereupon judgment of the court was pronounced, and the plaintiff in error, Uriah S. Lee, was sentenced to State prison at hard labor for the term of one year, and to pay a fine of $200, with costs of prosecution, and the plaintiffs in error, Frank Lee and Harry Sutton, each sentenced to seven months' imprisonment in the State prison at hard labor and $50 fine and the costs of prosecution. (See Case, page 17.)

A writ of error was sued out of the Supreme Court of New Jersey (see Case, page 10). On the petition of the defendants under the practice of New Jersey (see Case, page 95), the whole record was returned with the writ of error.

In New Jersey the Supreme Court is vested with and exercises all the powers and prerogatives of the Court of King's Bench by authority of Lord Cornbury, the first royal governor after the surrender of powers of government by the proprietors to Queen Anne, in 1702, and which were confirmed by several ordinances of subsequent governors, which are collected and recorded as an appendix to 6 N. J. Law Rep. (1 Halst.); so that by the writ of error and by statute, upon the return of this writ of error, it has full jurisdiction of the whole case. A decision of the Supreme Court, until reversed by the Court of Errors, is the law of the State.

"So long as it stands unreversed, every court and judge must so accept it whenever the same question again arises in any other proceeding. The notion that a deliberative

opinion of the Supreme Court in one case could be disregarded in any other cause arising in the same court or in any inferior court, and involving the same principle, would be opposed to all settled rules which control judicial conduct." Flaucher *vs.* Camden, 56 N. J. Law; 27 Vr., 244 (255).

The return of the writ of error and the argument thereof in the Supreme Court raised the constitutional questions, as will be seen by the opinion of the Supreme Court, on page 2 of the case, but they were disposed of by that court as follows:

"The defendants, in order to reverse the conviction, urge some objections to the constitutionality of the statute; but further consideration of them is precluded by the decision of this court in State *vs.* Corson, 67 N. J. Law, 178; 50 Atl., 780."

And the result of this was a judgment of the Supreme Court affirming the judgment brought up for review (see Case, page 100). Upon this judgment of the Supreme Court of New Jersey a writ of error was sued out from the New Jersey Court of Errors and Appeals (see Case, page 7) and the judgment removed into that court, the assignments of error being found on page 8. That court, upon the hearing, affirmed the judgment of the Supreme Court (see Case, page 104).

The New Jersey Court of Errors and Appeals being the highest Court of the State of New Jersey, the petition of the plaintiffs in error was presented to this court and Mr. Justice Brown allowed a writ of error removing the judgment of the Court of Errors and Appeals into this court (see Case, pages 114 and 115). The errors assigned thereon are on pages 109 to 112, inclusive.

As may be seen from the record, the alleged offense was committed against one Edward Allen, who had a lease, which is printed on page 3. Uriah S. Lee also had a lease, printed on page 5. Lee's leasehold was very much more extensive than Allen's. They were near together, only a

small space intervening between their boundaries. Allen was out in a boat on the Delaware Bay. All the plaintiffs in error were also out in their oyster-boat for the purpose of seeing if their boundary stakes were right and in position, as the ice during the winter frequently breaks them off. It is not disputed that the plaintiffs in error did fix their stakes on the oyster ground belonging to them, near Allen, and sailed down the bay to other grounds possessed by them.

Allen and Joseph Hilton, who was on the boat with him, were the State's only witnesses to the alleged offense. A large number of witnesses beside the plaintiffs in error, in the immediate neighborhood, say that they could have seen and would have seen had the offense been committed, disproving the allegation altogether, and a reading of the whole testimony would seem to lead to the conclusion that the story told by the plaintiffs in error on their trial was the true one, but of course with that question here we cannot deal. It is important, however, to have that in mind when it is remembered that the jury acquitted the plaintiffs in error of the charge of taking oysters, but convicted them under the charge of the court for illegal dredging. But this was only accomplished after the jury had been kept out for ten hours (see Case, page 17).

It is claimed, as is hereafter shown, that, under the charge of the court and the literal reading of the statute, the jury could have returned this verdict against the plaintiffs in error when they were only doing what they had a perfect right to do, granted to them by the Constitution of the United States.

Assignment of Errors.

First. The court erred in holding that the act of the Legislature of the State of New Jersey, being chapter 194 of the Laws of 1899, entitled "An act for the better regulation and control of the taking, planting, and cultivating of

oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey," approved March twenty-fourth, 1899, and the act of the Legislature of the State of New Jersey, being chapter 149 of the Laws of 1901, entitled "An act to amend an act entitled 'An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware River," approved March twenty-second, 1901, were not in conflict with the Constitution of the United States.

Second. The court erred in holding that the act of the Legislature of the State of New Jersey, being chapter 194 of the Laws of 1899, entitled "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey," approved March twenty-fourth, 1899, and the act of the Legislature of the State of New Jersey, being chapter 149 of the Laws of 1901, entitled "An act to amend an act entitled 'An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware River," approved March twenty-second, 1901, were not in conflict with the Constitution of the State of New Jersey.

Third. The court erred in holding that the provisions of said acts of the Legislature of the State of New Jersey are not in conflict with and in violation of the Constitution of the United States and article fourteen amending the Constitution, for that the State of New Jersey, by and through the provisions of said acts of the Legislature, assumes and seeks (1) to deprive the plaintiffs in error and certain other citizens of the United States and of the State of New Jersey of rights, privileges, and immunities secured to other citizens of the United States and of the said State; (2) to deprive the plaintiffs in error and other citizens of the United States of liberty and property without due process of law; (3) to deprive and to deny to the plaintiffs in error and certain citizens and persons within the jurisdiction of the State of New Jersey the equal protection of the law.

Fourth. The court erred in holding that by the provisions of said acts the plaintiffs in error are not deprived of rights, privileges, and immunities secured to other citizens of the United States and of the State of New Jersey by the Federal Constitution and laws of the United States.

Fifth. The court erred in holding that by the provisions of said acts the plaintiffs in error are not deprived of liberty and property without due process of law.

Sixth. The court erred in holding that the provisions of said acts do not deny to the plaintiffs in error the equal protection of the law.

Seventh. The court erred in holding that the said acts and the authority exercised thereunder, and thereby authorized to be exercised thereunder, are within the powers of the Legislature of the State of New Jersey.

Eighth. The court erred in holding that the said acts do not grant special and exclusive privileges to certain citizens

which it denies to the plaintiffs in error and to other citizens of the State.

Ninth. The court erred in ordering judgment to be entered and in entering judgment affirming the judgment of the court below.

Tenth. The court erred in holding that the provisions of said acts are not in violation of section 8, article 1, of the Constitution of the United States, which confers on Congress the exclusive power to regulate commerce among the several States.

Eleventh. The court erred in holding that the provisions of said acts do not deprive the plaintiffs in error of the right to earn a livelihood in the pursuit of a lawful and harmless occupation and of personal liberty in reference to said business.

Twelfth. The court erred in holding that the provisions of said act are uniform in their operation throughout the State upon all citizens of the State similarly situated.

Thirteenth. The court erred in holding that the provisions of said act do not unlawfully discriminate between those engaged in dredging oysters in Delaware Bay and Maurice River cove and those engaged in dredging oysters in other tide waters bordering on the said State of New Jersey.

Fourteenth. The court erred in holding the provisions of the said act forbidding the plaintiffs in error to take a dredge upon grounds leased by another not to be an abridgment of the inalienable and constitutional rights of the plaintiffs in error to pursue a lawful avocation in a lawful way without interference by the State.

Fifteenth. The court erred in holding that the judgment should not be reversed for the several causes and reasons

specified in the assignments of error filed in the said cause in the Supreme Court of the State of New Jersey and in not sustaining said allegations of error and each of them.

Sixteenth. The court erred in holding that the said judgment should be affirmed notwithstanding the reasons filed in the Court of Errors and Appeals, and each and every of them, and did not entitle the plaintiffs in error to a reversal of the judgment below.

Seventeenth. The court erred in holding that upon the whole case there was sufficient to support a conviction of the plaintiffs in error.

Eighteenth. The court erred in not reversing the judgment of conviction found against the plaintiffs in error upon the whole record and proceedings.

Nineteenth. The court erred in holding that there was any jurisdiction whatever obtained over the plaintiffs in error by indictments, steps and proceedings sought to be reviewed and in not holding that the plaintiffs in error were being deprived of their liberty and property without due process of law.

Twentieth. The court erred in determining that the State of New Jersey, defendant in error, was entitled to judgment against Uriah S. Lee, Frank B. Lee, and Harry Sutton, the defendants and the plaintiffs in error.

Twenty-first. The court erred in awarding judgment in favor of the State of New Jersey, the defendant in error, and against Uriah S. Lee, Frank B. Lee, and Harry Sutton, defendants, the plaintiffs in error, and affirming the judgment below.

Twenty-second. The court erred in affirming the judgment below when, according to the Constitution of the United

States, of the State of New Jersey, and the law of the land, the said judgment of the court below ought to have been reversed, annulled, and altogether held for nothing, and judgment ought to have been given for the plaintiffs in error against the defendant in error.

Twenty-third. The court erred in divers other ways and manner, to the great injury, damage, and detriment of the plaintiffs in error, of their liberty and property.

ARGUMENT.

The power of the State as to fish and oysters and the right of property therein, and that the cultivation of oysters is no interference with commerce, although carried on under the tidal waters of the State, and the power of the State to regulate the taking thereof, are too well established now to be the subject of discussion.

Smith vs. Maryland, 59 U. S., 71.
McCready vs. Virginia, 94 U. S., 391.
Manchester vs. Massachusetts, 139 U. S., 240.

But we contend that this act is unconstitutional, in that it discriminates between citizens of the United States and by its terms prohibits citizens from sailing, with oyster-boats equipped for taking oysters in the tidal waters of Delaware Bay, over oyster grounds leased by the oyster commission to another person. In doing so it conflicts with the commerce and navigation clause, section 8, article 1, of the Constitution of the United States, and that it also is in conflict with the fourteenth amendment of the Constitution; all of which is detailed in the twenty-three assignments of error, pages 109 to 112.

There can be no doubt that there is a Federal question here involved, of course, which was raised in the Supreme Court of New Jersey, but naturally without effect, for the reason stated by Mr. Justice Dixon in the opinion in this cause under review, following the rule laid down in *Flaucher*

vs. Camden, 56 N. J. Law, 244, above cited. These reasons were fully and particularly raised the first opportunity they could be on the hearing in the New Jersey Court of Errors and appeals; but as that court has affirmed the Supreme Court specifically upon the grounds stated in the opinion filed in the Supreme Court (see Case, page 103), it also affirms the case of State *vs.* Corson, which is found in 67 N. J. Law, page 128, and the part of the decision here interesting is found on pages 182 and 183.

To see the harm done to these defendants, it is only necessary to read the section in question, and then turn to the charge of the trial judge, at the bottom of page 92 and the top of page 93, as follows:

"It then remains to be considered whether or not the defendants on that day dredged or threw, *took* or cast a dredge or other instrument used for the purpose of catching oysters upon that ground. If you find that they did, then they should be convicted of illegal dredging, as charged in the first count of the indictment."

It will thus be seen that if the jury believed, as they must have believed, because there was no contradiction of the fact—on the contrary, an admission of it—that the boat in which the defendants in the indictment, the plaintiffs in error, were sailing had on it an oyster-dredge, and they sailed in the tidal waters flowing over said staked ground and sailed over said staked ground, that then they might be convicted.

It is a conceded fact that the boat of the plaintiffs in error was an oyster-boat; had on it an oyster-dredge, an instrument used for the purpose of catching oysters; that it sailed over said staked ground, and that therefore defendants did *take* over and upon the staked ground their oyster-dredge.

There could be no valid State enactment prohibiting the sailing of a properly equipped oyster-boat anywhere in the tidal waters of the State. The right and power of the State to the oysters and to the tide waters is held subject to the paramount right of navigation, the regulation of which

is entirely within the power of the Congress of the United States (*McCready vs. Virginia, 94 U. S., 391*).

If it be conceded that it was within the power of the State, in the exercise of its functions, to prohibit the shooting of game within certain sections or in certain seasons, a statute which forbade the carrying of a loaded gun or other instrument by which game could be killed could not be held to be constitutional even without, we apprehend, calling upon the second amendment to the Constitution.

While this statute seems to us clearly to conflict with the commerce clause of the Constitution, in that it attempts to regulate what a person may or may not have upon his boat or vessel, we think it is also contrary to the fourteenth amendment, because it restricts a citizen in prosecuting his lawful vocation in a lawful way and making it impossible for one situated like the plaintiffs in error, who owned staked oyster lands, to sail to them in the tidal waters of the United States, because in doing that he would have to sail over the staked lands of other persons. If he could not take his vessel equipped for catching oysters, it would be useless for him to go. Of course he has and must have a lawful right to take upon his own lands any and all dredges and instruments for catching oysters. In doing this he has a right to use the surface and body of navigable waters for navigating his craft, and any law of the State which tends to restrict, limit, or prevent that right is in conflict with the Constitution of the United States.

Unless the construction which we have put upon this act and the charge of the trial judge to this jury is untenable, then the verdict of this jury may have been, and must be presumed to have been, in line with this construction, and the defendants therein, the plaintiffs in error, are by the judgment of the State court improperly deprived of their liberty and their property.

We most respectfully submit that the judgment under review should be reversed.

E. A. Armstrong,
William T. Read,
Of Counsel with Plaintiffs in Error.

FILED
OCT 5 1907
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 16.

URIAH S. LEE ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

BRIEF FOR DEFENDANT IN ERROR.

ROBERT H. McCARTER,
Attorney General of New Jersey,
Counsel for Defendant in Error.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 28150

(20,053.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 16.

URIAH S. LEE, FRANK B. LEE, AND HARRY SUTTON,
PLAINTIFFS IN ERROR,

vs.

THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

BRIEF FOR DEFENDANT IN ERROR.

I.

Statement of the Facts in the Case.

The facts in the case are, briefly, these:

The plaintiffs in error in the above-entitled cause were, at the May term, 1903, of the court of quarter sessions of the county of Cumberland, in the State of New Jersey, indicted by the grand jury of the said county of Cumberland upon an indictment containing two counts (see p. 13), the first count charging in effect that the plaintiffs in error did dredge for oysters upon a certain oyster bed or ground which had been leased by the State Oyster Commission of the State of New Jersey under the authority of the provisions of an

act of the legislature of the State of New Jersey entitled "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey," approved March 24, 1899, and the various acts amendatory thereof and supplementary thereto, to one Edward Allen, without the permission of the said Edward Allen; and the second count of the said indictment charging the defendants with the larceny of fifty baskets of oysters, of the value of fifty dollars, of the goods and chattels of the said Edward Allen. Upon the trial of the said indictment before the said court of quarter sessions, on the fourteenth day of May, in the year 1903, the plaintiffs in error were convicted upon the first count contained in the said indictment, and acquitted upon the second count, and were thereupon sentenced by the court—the said Uriah S. Lee to a term of imprisonment for one year, and to pay a fine of two hundred dollars and costs; the said Frank B. Lee to imprisonment for seven months, and to pay a fine of fifty dollars and costs; and the said Harry Sutton to imprisonment for seven months, and to pay a fine of fifty dollars and costs.

Thereafter, on the eighteenth day of May, 1903, the said plaintiffs in error sued out a writ of error removing the judgment against them from the said court of quarter sessions of Cumberland county to the Supreme Court of the State of New Jersey; and, argument being had upon the said cause before the said Supreme Court of the State of New Jersey, at the February term, 1904, of said court, the said judgment was affirmed; and thereupon, on the twenty-sixth day of February, in the year 1904, the said plaintiffs in error removed the said judgment by writ of error from the Supreme Court into the Court of Errors and Appeals of the State of New Jersey; and, argument being had upon the said cause before the said Court of Errors and Appeals, at the November term, 1904, the judgment of the said Supreme Court was affirmed; and thereafter the said plaintiffs in error did,

by writ of error dated the twenty-eighth day of January, in the year 1905, remove said judgment of the Court of Errors and Appeals of the State of New Jersey, being the court of last resort in said State, to this honorable court for review.

II.

Questions Raised.

It appears by the petition of the plaintiffs in error, found upon page 105 of the transcript of the record, that there are two alleged Federal questions to be presented to this court for review upon this writ of error, which two reasons are variously amplified and detailed by the various assignments of error filed by the plaintiffs in error, found upon pages 109 to 112 of the transcript. The first contention raised is, that the act of the legislature of the State of New Jersey, being chapter 194 of the Laws of 1899, entitled "An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey," approved March 24, 1899, and its amendment, the act of the legislature of the State of New Jersey, being chapter 149 of the Laws of 1901, entitled "An act to amend an act entitled 'An act for the better regulation and control of the taking, planting and cultivating of oysters on lands lying under the tidal waters of the Delaware Bay and Maurice River Cove, in the State of New Jersey,' approved March twenty-fourth, eighteen hundred and ninety-nine, and for the better enforcement of the provisions of said act and to extend the provisions of said act to the lands lying under the tidal waters of the Delaware River," approved March 22, 1901, were in conflict with and in violation of the Constitution of the United States, and of article 14, amending said Constitution; and, secondly, plaintiffs in error contend that the provisions of the said act forbidding the plaintiffs in error "to take" a dredge upon grounds leased

by another for the purpose of planting and cultivating oysters thereon was an abridgment of the alleged inalienable and constitutional right of the plaintiffs in error to pursue a lawful avocation in a lawful way without interference by the State.

The act of 1899 (Laws of New Jersey, 1899, p. 511), in section 11, provides as follows, after the creation of the State Oyster Commission and the establishment of its powers:

> "The State Oyster Commission, before issuing any lease to any person as provided for in this act, shall cause the person applying for said lease to make and file with them an oath that he is a citizen and actual resident of this State, and has been for twelve months next preceding such application, or that at the time of the adoption of this act the applicant was holding and using, and has since continuously held and used, for the purpose of taking, planting and cultivating oysters, the lands for which the application for said lease is made; and the oyster superintendent, before issuing any license to any boat or vessel as provided for in this act, shall cause the master or captain of said boat or vessel to make and file with him an oath that said boat or vessel is wholly owned by citizens and actual residents of this State, and who have been such for twelve months next preceding, or that at the time of the adoption of this act said boat or ves[illegible] was duly licensed, under laws existing at that time, to carry on the business of catching, planting and growing oysters in the Delaware Bay and Maurice River Cove, in this State; such oaths may be made and taken by and before the several members of the State Oyster Commission and the said oyster superintendent; and the State Oyster Commission shall have power to revoke any lease or license issued by reason of any false oath."

And the same act further provides, in section 20:

> "Any person or persons who shall hereafter dredge upon or throw, take or cast his oyster dredge, or any other instrument used for the purpose of catching oysters, upon any oyster bed or ground duly marked,

> buoyed or staked up within the waters of this State, belonging to any other person, without the permission of the lessee or lessees thereof, shall be deemed guilty of a misdemeanor and a violation of the provisions of this act."

This act of 1899 was supplemented and amended by an act of 1901 (Laws of New Jersey, 1901, p. 307), by which section 11 was amended to read as follows:

> "The State Oyster Commission, before issuing any lease to any person as provided for in this act, shall cause the person applying for said lease to make and file with them an oath that he is a citizen and actual resident of this State, and has been for twelve months next preceding such application; and the oyster superintendent, before issuing any license to any boat or vessel as provided for in this act, shall cause the master or captain of said boat or vessel to make and file with him an oath that said boat or vessel is wholly owned, *bona fide*, by citizens and actual residents of this State, and who have been such for twelve months next preceding; such oaths may be made and taken by and before the several members of the State Oyster Commission and the said oyster superintendent; and the State Oyster Commission shall have power to revoke any lease or license issued by reason of any false oath made or taken under any provisions of this act."

Section 20 was amended to read as follows:

> "Any person or persons who shall hereafter dredge upon or throw, take or cast his oyster dredge, or any other instrument used for the purpose of catching oysters, upon any oyster bed or ground duly marked, buoyed or staked up within the waters of the Delaware River, Delaware Bay and Maurice River Cove, in this State, belonging to any other person, without the permission of the lessee or lessees thereof, shall be guilty of a misdemeanor and of the violation of the provisions of this act."

Counsel for the plaintiffs in error contends that the Court of Errors and Appeals of the State of New Jersey was in

error in holding that section 11 of the act of 1899, as amended by the act of 1901, is not in conflict with article 14, amending the Constitution of the United States, because, as he says, the State of New Jersey, through the provisions of the said acts of the legislature, seeks to deprive the plaintiffs in error of rights, privileges, and immunities secured to other citizens of the United States and of the said State; secondly, to deprive the plaintiffs in error of liberty and property without due process of law; and, thirdly, to deprive and deny to the plaintiffs in error the equal protection of the law. The basis of the contention lies in the first point stated, because if this is correctly taken, the second and third points follow; but if the first point fails, the second and third points fail with it and are without force.

The question raised, therefore, with reference to section 11 of the two acts in question is, whether the limitation to citizens of the State of New Jersey, who have been such for twelve months, in the use, by lease, of the said lands is or is not in conflict with the fourteenth amendment to the Constitution of the United States.

III.

Argument.

This is no new question to this court, having been definitely raised and decided in the negative in the case of McCready *v.* Virginia (94 U. S., 391).

McCready, a citizen of Maryland, was convicted and fined in the Virginia court for planting oysters in violation of a statute of Virginia, which provided that—

> "If any person other than a citizen of this State shall take or catch oysters or any shell-fish in any manner, or plant oysters in the waters thereof, or in the rivers Potomac or Pocomoke, he shall forfeit $500, and the vessel, tackle and appurtenances."

Counsel for the plaintiff in error argued that this legislation of Virginia was in violation of the second section of the

fourth article of the Federal Constitution, which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Section 2 of article 4 of the Constitution of the United States, which was before the court in the case cited, reads as follows:

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Section 1 of article 14, which is raised and invoked in the present case, in part is as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." * * *

It was also argued that such legislation of the State of Virginia was in conflict with the third clause of the 8th section of the 1st article of the Constitution, which confers on Congress the power to regulate commerce with foreign nations and among the several States, which question is also later raised in the present case, as will be seen hereafter. In pronouncing the opinion, Mr. Justice Waite said:

> "We think we may safely hold that the citizens of one State are not invested by this clause of the Constitution with any interest in the common property of the citizens of another State. * * * The planting of oysters in the soil covered by water owned in common by the people of the State is not different in principle from that of planting corn upon dry land held in the same way. Both are for the purpose of cultivation and profit; and if the State, in the regulation of its public domain, can grant to its own citizens the exclusive use of dry lands, we see no reason why it may not do the same thing in respect to such as are covered by water. And as all concede that a State may grant to one of its citizens the exclusive use of a part of the common property, the conclusion

> would seem to follow, that it might by appropriate legislation confine the use of the whole to its own people alone."

This case was considered and distinguished in the case entitled *In re* Ah Chong, 2 Fed. Rep., 733, and has since been cited with approval in the following cases: Bridge Co. *v.* United States, 105 U. S., 491; Manchester *v.* Massachusetts, 139 U. S., 259; Hardin *v.* Jordin, 140 U. S., 383; Illinois Central R. R. *v.* Illinois, 146 U. S., 458; Schively *v.* Bowlby, 152 U. S., 24; Geer *v.* Connecticut, 161 U. S., 528; Blake *v.* McClung, 172 U. S., 250; Maxwell *v.* Dow, 176 U. S., 596; Lawton *v.* Steele, 152 U. S., 139.

We believe that these decisions make further comment upon the first question raised unnecessary.

Counsel for plaintiffs in error raises the second question, that section 20 of the act of 1899, as amended in 1901 by the words "dredge upon or throw, take or cast his oyster dredge," constituting a misdemeanor, is in contravention of the commerce and navigation clauses of the Constitution, holding that the prohibition of the statute is such that, no matter how innocent and proper the act may be, the mere taking of any dredge or appliance for the catching of oysters upon a vessel over leased ground becomes a violation of the statute and a misdemeanor.

It is here proper to call the attention of the court to the fact that the indictment which is under review did not charge the defendants with taking and dredging over leased lands. The language of the indictment, page 13 of the record, charges that the defendants "unlawfully did dredge upon and throw and cast their oyster dredges for the purpose of catching oysters," and omits the word "take," as contained in the statute. The reading of the testimony clearly shows that the evidence was directed at the act of dredging, not at a mere act of carrying a dredge across a leased ground, and the charge of the court, pages 93 and 94, clearly shows that the question put to the jury was the question of fact, as to

whether dredges were cast, not merely taken across the land upon a boat.

The court said, page 93:

> "Now, gentlemen, if you believe that testimony, if you believe that occurred as these witnesses for the State say it occurred, then, regardless of whether or not they got any oysters, if they were throwing their dredges there, upon that ground, they should be convicted under the first count of this indictment."

And again, on the same page:

> "Now, considering all of this testimony and any other testimony in the case, you ought to determine whether or not the defendants were there heaving their dredges and dredging upon this ground."

And finally, toward the close of his charge, on page 94, the court said:

> "I repeat, if you are satisfied that the defendants dredged there, that they threw their dredges there, they should be convicted of illegal dredging, independent of any conclusion you reach as to whether or not they caught oysters."

It must be clear, therefore, that the question of navigation and commerce was not presented by the indictment; was not touched upon by the evidence; was not presented to the jury by the court; and that the verdict of the jury was based entirely upon their determination of the question of fact as to whether or not there had been the unlawful act of dredging upon leased ground without the permission of the lessee.

The question of navigation, therefore, was not at issue, and was not raised in any of the courts of New Jersey. This court cannot consider as a basis of error in the determination of the Court of Errors and Appeals of New Jersey a question which was not there presented. An examination of the assignments of error on page 96, upon which the Court of Errors and Appeals of New Jersey reviewed the

affirmance of the judgment below by the New Jersey Supreme Court, fails to disclose any assignment of error specifically raising this second question now presented to this court.

This second question, therefore, is not assignable as error (*In re* Edwards *v.* Elliott, 21 Wall., 532; Crowell *v.* Randell, 10 Peters, 392; Union Pacific R. R. Co. *v.* James, 163 U. S., 485; Badger *v.* Ranlet, 106 U. S., 255; Street Railroad Co. *v.* Hart, 114 U. S., 654; Marine Bank *v.* Fulton Bank, 2 Wall., 252).

But if this court believes that this question should be considered, then the act must be considered and interpreted to determine whether or not the contention of counsel for the plaintiffs in error is well founded. Reading this section of the act as a whole, its purpose is clear and the intent evident that it is directed to create as a misdemeanor the unlawful taking of oysters from an oyster bed which has been marked up and leased, without permission of the lessee, by the operation of a dredge or other instrument used for the purpose of catching oysters. There is nothing in the purport of the act, its meaning or intent, to limit any right of navigation or commerce. To isolate the word "take" is to put upon the act a meaning which it was never intended to have, which it never has had, and upon which, so far as counsel can ascertain, no conviction has ever been attempted or had; but using the word "take" in connection with its co-ordinate words, "dredge upon, throw and cast," "take" has an appropriate place and meaning, in no wise a limitation upon the right of navigation, but refers to the taking of an oyster dredge or instrument used for the purpose of catching oysters in connection with the act of dredging, throwing or casting, which becomes, by reason of the dredging or casting, an unlawful act. The answer to the contention of counsel for the plaintiffs in error, therefore, is that the word "take" did not in the present instance have the meaning which he has assigned to it; nor has it had, nor could it have, such meaning as to be forced into a limitation upon the right of

navigation or commerce, but it is by its associate words made a part of the act of throwing or casting an oyster dredge or instrument used for the taking of oysters. So that, without reference to the right of navigation or commerce, it becomes in connection with certain acts itself unlawful.

Even if this court is of the opinion that it can properly, under the assignment of error presented to the Court of Errors and Appeals of New Jersey at the time the judgment under review was pronounced, consider this second question, counsel believe that it will be found without any force, or without such application to the present conviction that this court will be warranted in overturning the action of all the courts of New Jersey which have passed upon this question sustaining the conviction, upon the enforced interpretation of this work "take," which, as counsel have said, is here presented for the first time.

We believe, therefore, that the first question raised in this present case is *res judicata;* and that the second question raised cannot be considered by the court for the reasons stated, or that, if considered, it must be disposed of as without force or effect in the present instance.

The writ of error, therefore, should be dismissed with costs.

Respectfully submitted.

ROBERT H. MCCARTER,
Attorney General of New Jersey,
Counsel for Defendant in Error.

navigate interstate waters was not essential to the case, no valid constitutional objection can be raised for want of power to pass or enforce the statute.

70 N. J. L. 388, affirmed.

THE facts are stated in the opinion.

Mr. E. A. Armstrong, with whom *Mr. William T. Read* was on the brief, for plaintiffs in error:

This act is unconstitutional, in that it discriminates between citizens of the United States and by its terms prohibits citizens from sailing, with oyster-boats equipped for taking oysters in the tidal waters of Delaware Bay, over oyster grounds leased by the oyster commission to another person. In doing so it conflicts with the commerce and navigation clause, section 8, Article I, of the Constitution of the United States. It is also in conflict with the Fourteenth Amendment of the Constitution.

There could be no valid state enactment prohibiting the sailing of a properly equipped oyster-boat anywhere in the tidal waters of the State. The right and power of the State to the oysters and to the tide waters is held subject to the paramount right of navigation, the regulation of which is entirely within the power of the Congress of the United States. *McCready* v. *Virginia*, 94 U. S. 391.

While this statute clearly conflicts with the commerce clause of the Constitution, in that it attempts to regulate what a person may or may not have upon his boat or vessel, it is also contrary to the Fourteenth Amendment, because it restricts a citizen in prosecuting his lawful vocation in a lawful way and making it impossible for one situated like the plaintiffs in error, who owned staked oyster lands, to sail to them in the tidal waters of the United States, because in doing that he would have to sail over the staked lands of other persons. If he could not take his vessel equipped for catching oysters, it would be useless for him to go. Of course he has and must have a lawful right to take upon his own lands any and all

dredges and instruments for catching oysters. In doing this he has a right to use the surface and body of navigable waters for navigating his craft, and any law of the State which tends to restrict, limit, or prevent that right is in conflict with the Constitution of the United States.

Mr. Nelson B. Gaskill for defendant in error, with whom *Mr. Robert H. McCarter*, Attorney General of the State of New Jersey, was on the brief.

MR. JUSTICE DAY delivered the opinion of the court.

The plaintiffs in error were convicted in the Court of Quarter Sessions of Cumberland County, New Jersey, at the May term, 1903, of the offense of unlawfully dredging upon certain oyster beds for the purpose of catching oysters, contrary to the statute enacted in that State. This judgment was affirmed in the Court of Errors and Appeals of New Jersey and this writ of error seeks the reversal of that judgment.

Section 20 of the act of 1899, amended, Laws of 1901, p. 307, provides:

"Any person or persons who shall hereafter dredge upon or throw, take or cast his oyster dredge, or any other instrument used for the purpose of catching oysters, upon any oyster bed or ground duly marked, buoyed or staked up within the waters of the Delaware River, Delaware Bay and Maurice River Cove, in this State, belonging to any other person, without the permission of the lessee or lessees thereof, shall be guilty of a misdemeanor and of the violation of the provisions of this act."

It is the contention of the plaintiffs in error that this statute violates the right of free navigation, and undertakes to regulate interstate commerce in violation of section 8, Article I, of the Federal Constitution, and deprives the plaintiff in error of rights secured by the Fourteenth Amendment.

The power of the State to regulate the oyster industry,

although the same is carried on under tidal waters in the State, is not contested, and could not successfully be. *Smith* v. *Maryland*, 18 How. 71; *McCready* v. *Virginia*, 94 U. S. 391; *Manchester* v. *Massachusetts*, 139 U. S. 240.

The objection to the legality of the conviction from the standpoint of rights protected by the Federal Constitution, as urged upon our attention, rests upon the argument that § 20, amended as above quoted, permits the conviction of a person who shall *take* an oyster dredge or other instrument used for the purpose of catching oysters, on any oyster bed or grounds within such navigable waters, thereby abridging and interfering with the right of free commerce with foreign nations, and among the several States. And it is argued that persons sailing over such waters, having an oyster-dredge aboard a boat, might be convicted of thus taking a dredge over such ground, in violation of the statute. Of this contention it is enough to say that in this case no such construction of the statute was made or enforced against the plaintiffs in error. Nor were they convicted because of any such state of facts; and it is well settled in this court that, because a state statute, when enforced in a state court against a class to which the party complaining does not belong, may work a deprivation of constitutional rights, that fact does not authorize the reversal of a judgment of a state court not enforcing the statute so as to deprive the party complaining of rights which are protected by the Federal Constitution. *Hatch* v. *Reardon*, 204 U. S. 152, 160, and cases there cited.

An inspection of this record shows that the count of the indictment under which the plaintiffs in error were convicted charged them with unlawfully dredging, throwing and casting dredges for the purpose of catching oysters upon certain leased lands in violation of the statute.

The testimony offered on the part of the State tends to show that certain dredges were thus thrown and cast for the purpose of catching oysters upon leased lands belonging to one Allen.

On the part of the defense the witnesses testify that the dredges were not thus cast and used upon the lands in question. There was no pretense in the charge, in the indictment, or in the testimony offered by the people, that a conviction could be had for the mere taking of a dredge over the leased lands. The conviction depended, both in the charge and in the testimony, upon establishing the fact that the plaintiffs in error thus illegally used the dredges.

It is contended that the plaintiffs in error might have been convicted for the mere sailing over the lands with a dredge aboard the boat, because of the following language in the court's charge:

"It then remains to be considered whether or not the defendants on that day dredged or threw, took or cast a dredge or other instrument used for the purpose of catching oysters upon that ground. If you find that they did, then they should be convicted of illegal dredging, as charged in the first count of the indictment."

But this excerpt must be read in connection with the rest of the charge, and it is perfectly apparent that it was not intended that the jury might convict for taking a dredge across the lands in sailing over them, under an indictment which made no mention of such taking, but distinctly counted upon the unlawful throwing and casting of the dredge upon the leased ground for the purpose of catching oysters. For immediately following the language quoted the learned judge goes on to say:

"Now, the State produces, bearing upon that question, the owner of the ground, and he testifies that on the day named in the indictment he, aboard of the Golden Light with Captain Hilton, visited his ground; that as they approached it—you will recall just how near they placed themselves, from their testimony—as they approached it they saw these defendants aboard of a vessel called the Lee maneuvering up and down this ground, No. 137, section B, of Captain Allen, and heaving their dredges thereon. Now, gentlemen, if you believe that

testimony, if you believe that occurred as these witnesses for the State say it occurred, then, regardless of whether or not they got any oysters, if they were throwing their dredges there upon that ground they should be convicted under the first count of this indictment.

* * * * * * * *

"Now, considering all of this testimony and any other testimony in the case, you ought to determine whether or not the defendants were there heaving their dredges and dredging upon this ground. And in endeavoring to ascertain the truth from this conflicting testimony it is but the dictate of common sense that you should consider whether any of the witnesses have a motive to testify falsely."

It is, therefore, apparent that the possible construction of the statute in such manner as to convict plaintiffs in error of a crime in merely exercising their right to navigate interstate waters was not made essential to the determination of the case.

A conviction was had because of the use of a dredge upon leased lands, in violation of the New Jersey statute for the protection of the oyster industry. Against the statute, as thus enforced, no valid objection can be urged for want of power to pass or enforce it because of rights protected by the Federal Constitution.

Judgment of the Court of Errors and Appeals of New Jersey is

Affirmed.

LEE *v.* STATE OF NEW JERSEY.

ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

No. 16. Argued October 16, 1907.—Decided October 28, 1907.

A State has power to regulate the oyster industry although carried on under tidal waters in the State.

Although a state statute may be unconstitutional as against a class to which the party complaining does not belong, that fact does not authorize the reversal of a judgment not enforcing the statute so as to deprive that party of any right protected by the Federal Constitution.

Where it appears that a conviction under the New Jersey statute for the protection of the oyster industry depended both in the charge and in the testimony upon the actual illegal use of oyster dredges, and the possible construction of the statute which made it a crime to merely